

**NOTICE OF DECISION MADE UNDER SECTION 23
OF THE FREEDOM OF INFORMATION ACT 1982 (CTH) (FOI ACT)
WITH REASONS FOR DECISION PROVIDED UNDER SECTION 26**

- Applicant:** Phillip Sweeney
- Decision-maker:** Ben Carruthers, an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of section 23(1) of the FOI Act.
- Relevant documents:** Request for documents relating to responses provided by APRA to questions asked by Senator Gallagher at the Senate Estimates Hearing on 2 March 2017 where the subject matter relates to the superannuation.
- My decision:** *Grant access*, under section 11A(3) of the FOI Act, to the documents specified in the Applicant's request because the requested documents are publicly available.

MATERIAL FACTS

1. I refer to your email dated 27 March 2017, in which you sought access under the FOI Act to the following information:

“At the Senate Estimates Hearing on 2 March 2017 Senator Gallagher asked Mrs Helen Rowell a number of questions on the 10 year rate of return of superannuation funds administered by the big four banks.

Mrs Rowell asked that the questions be taken on notice.

The documents I seek are the responses provided by Mrs Rowell to the questions asked by Senator Gallagher at the Senate Estimates Hearing on 2 March 2017.

2. By email dated 29 March 2017, APRA acknowledged receipt of your request.

EVIDENCE AND MATERIAL RELIED ON

3. In making my decision, I have relied on the following evidence and material:
- a) the Applicant's request received by APRA on 27 March 2017;
 - b) correspondence between Senior Manager, Legal and Paralegal, Legal on 28 March 2017;
 - c) file note written by FOI Officer dated 28 March 2017;
 - d) acknowledgment email from FOI Officer to the Applicant dated 29 March 2017;

- e) relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (APRA Act);
- f) relevant sections of the FOI Act; and
- g) guidelines issued by the Office of the Australian Information Commissioner to date (FOI Guidelines).

REASONS FOR DECISION

- 4. APRA has identified the responses to questions on notice from the Senate Estimates Hearing on 2 March 2017 (Relevant Documents).
- 5. I have decided to grant access to the Relevant Documents under section 11A(3) of the FOI Act as they are publicly available. The Relevant Documents are accessible on the Parliament of Australia website:
http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/economicscotte/estimates/add1617/Treasury/index.
- 6. The Relevant Documents are attached to these reasons for your convenience.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for Internal Review of Decision

- 7. Pursuant to section 54 of the FOI Act, you have the right to apply for an internal review of the decision if you disagree with my decision. If you make an application for review, another officer of APRA will be appointed to conduct a review and make a fresh decision on the merits of the case.
- 8. Pursuant to section 54B of the FOI Act, you must apply in writing for a review of the decision within 30 days after the day the decision has been notified to you.
- 9. You do not have to pay any other fees or processing charges for an internal review, except for providing access to further material in the document released as a result of the review (for example, photocopying, inspection, etc).
- 10. No particular form is required to apply for review although it is desirable (but not essential) to set out in the application the grounds on which you consider that the decision should be reviewed.
- 11. Application for an internal review of the decision should be addressed to:

FOI Officer
Australian Prudential Regulation Authority
GPO Box 9836, Sydney NSW 2001
Telephone: (02) 9210 3000
Facsimile: (02) 9210 3411
- 12. If you make an application for internal review and we do not make a decision within 30 days of receiving the application, the agency is deemed to have affirmed the original decision. However, under section 54D of the FOI Act, APRA may apply, in writing to the Information Commissioner for further time to consider the internal review.

Application for review by Information Commissioner

13. Pursuant to section 54L of the FOI Act, you have the right to apply to the Information Commissioner for a review of the original decision or a review of a decision made on review.
14. Any application must be in writing and must give details of an address where notices may be sent and include a copy of the original decision or the decision made on internal review.
15. An application for review by the Information Commissioner should be sent:
 - Online: www.oaic.gov.au
 - Post: GPO Box 2999, Canberra ACT 2601
 - Fax: +61 2 9284 9666
 - Email: enquiries@oaic.gov.au
 - In person:
Level 3, 25 National Circuit
Forrest, ACT, or at
Level 8, Piccadilly Tower, 133 Castlereagh Street,
Sydney, NSW

Application for review by Administrative Appeals Tribunal

16. If the decision on review by the Information Commissioner is not to grant access to all of the documents within your request, you would be entitled to seek review of that decision by the AAT.
17. The AAT is an independent review body with the power to make a fresh decision. An application to the AAT for a review of an FOI decision does not attract a fee. The AAT cannot award costs either in your favour or against you, although it may in some circumstances recommend payment by the Attorney-General of some or all of your costs. Further information is available from the AAT on 1300 366 700.

Complaints to the Information Commissioner

18. You may complain to the Commissioner concerning action taken by this agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Commissioner will conduct an independent investigation of your complaint.
19. You may complain to the Commissioner either orally or in writing, by any of the methods outlined above, or by telephone, on 1300 363 992.


Ben Carruthers
FOI Officer
Australian Prudential Regulation Authority

Date:

18.4.17

FREEDOM OF INFORMATION ACT 1982 (CTH)

11A Access to documents on request

Scope

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of *exempt document* in subsection 4(1).

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Prudential Regulation Authority
Question No: 142
Topic: For-Profit Sector Superannuation - Fund Performance
Reference: Hansard page 28-29 (02 March 2017)
Senator: Gallagher, Katy

Question:

Senator GALLAGHER: Do you know how much profit has been earned from superannuation products by the banks in the last financial year?

Mrs Rowell: I don't, no.

Senator GALLAGHER: Does APRA know that information or would you have that information?

Mr Byres: We could take on notice to see if we have that information. I suspect it would be a very difficult question, because it would require a lot of estimation and assumptions about cost allocations and various things, but we can take the question on notice.

Answer:

The following is in response to Questions on Notice:

- 142 (SQ17-000150)
- 143 (SQ17-000151)
- 151 (SQ17-000185)
- 152 (SQ17-000192)

1. Banks' profits earned from superannuation entities and products

- APRA's superannuation data collection does not include information that would enable the 'profit' that a bank-owned group may earn from its superannuation funds and products to be determined.
- RSE licensees report 'profit after tax' under *Reporting Standard SRS 330.0 Statement of Financial Performance* however this measurement primarily reflects earnings on fund assets (i.e. on investments made on behalf of members), rather than the amount that an RSE licensee may potentially pay from the fund as a 'dividend' or 'profit' to a parent or other associated entity.
- Further, APRA's authorised deposit-taking institution data collection does not require separate reporting of data on profit obtained by bank-owned groups from their superannuation funds and products. The bank groups' public financial statements are likely to be the most reliable source in obtaining an overall picture of revenue and profit from superannuation. Nonetheless, it is likely to be difficult to accurately attribute profit to superannuation funds and products, particularly when various subsidiaries (e.g. insurance, financial planning, investment management) may provide products or services to the business operations of group RSE licensees or directly to fund members.
- As discussed further in part 6 of this response, APRA's focus in assessing the performance of RSE licensees is to consider their performance in delivering outcomes for the membership of funds within their business operations. This encompasses not just

investment returns, but also includes factors such as fees and costs, insurance, services and governance of the RSE licensee.

2. Limitations of rate of return (ROR) as a comparator

- Parts 3 – 5 of this response provide APRA data on ROR, which represents the net earnings on superannuation assets and measures the combined earnings of a superannuation fund's assets across all its products and investment options. The majority of RSE licensees offer, from within their funds, both default and choice products. This is particularly the case for larger retail funds such as the bank owned public offer funds.
- As APRA has noted in many forums previously, whole of fund investment performance comparisons between funds with substantially different levels of default and choice members/assets are less meaningful than more “like for like” comparisons at product or investment option level. This issue is expanded on in part 6 of this response.

3. Major bank owned funds

- Major bank owned funds represent the majority of retail fund assets at \$316 billion, or 58 per cent (at 30 June 2016).
- There are six major bank owned funds with a 10 year rate of return (ROR) above the median for all APRA regulated funds. Five of these funds are non-public offer funds and one is a public offer fund. The 10 year ROR performance of these funds exceeded the 10 year median ROR of all APRA regulated funds by a range of 0.2% to 1.9% pa.

4. Median 10 year rate of return for all funds

- The industry-wide ten year median ROR for the period ending June 2016 was 4.3% pa.
- There are 27 major bank owned funds with a 10 year ROR. Of these, 21 had a 10 year ROR below the median.
- Four funds owned by non-majors (AMP, Citibank and Macquarie) have a ten year ROR. The ROR of one of these funds is above the median. As a consequence, in total seven major and non-major owned funds have a 10 year ROR above median and 24 have a 10 year ROR below the median.
- There are 41 industry funds with a 10 year rate of return (ROR). Of these, 30 have a 10 year ROR above the industry-wide median return and the ROR for the remaining 11 industry funds is below the industry-wide median ROR.

5. Average 10 year rate of return for all funds

- The industry-wide ten year average ROR for the period ending June 2016 as published in the *Annual Super Bulletin* was 4.6% pa.
- Five funds owned by the major banks have a 10-year ROR above the average for the period ending June 2016. None of these funds are public-offer funds.
- Six funds owned by major and non-majors have a 10-year ROR above the average for the period ending June 2016. None of these funds are public offer.
- 25 industry funds have a 10 year ROR for the period ending June 2016 above the industry-wide average return. 16 industry funds have a 10 year ROR for the period ending June 2016 below the industry-wide average return.

6. Assessing and comparing fund performance

- Fund performance should be assessed in a multifaceted way over the medium to long term, and not just by reference to investment returns. As noted above, factors such as fees and costs, insurance, services, and governance of the RSE licensee are also relevant to the outcomes achieved for members over the medium to long term.
- As noted in part 2 above, whole of fund ROR comparisons between funds with significantly different business models will not necessarily provide a meaningful assessment of performance.
- In particular, public offer funds offered by RSE licensees within banking groups typically have diverse membership with a much higher proportion of choice (vs default) members. This means that the ROR at fund level substantially reflects the asset allocation/investment option choices made by those members. In comparison, staff funds are typically relatively small with a high proportion of default members and limited investment options. By way of example, a higher proportion of the assets of bank public offer funds are in fixed income investments relative to staff funds.
- Further, the member demographic profiles of the different funds are likely to be significantly different (i.e. age, salary, account balances, member risk preferences), which also results in differences in the RSE licensee's investment strategy.
- **Attachment A** contains a table that provides APRA data on ROR, number of investment options, asset allocation and age profile of ANZ and CBA public offer and staff funds. This data highlights the differences in composition, options and asset allocation between staff funds and public offer funds.
- In assessing the performance of bank public offer funds, it is more appropriate to compare them to other similar public offer funds in respect of size (membership numbers, assets), default member flows, composition of choice and default members, average account balances and demographics of membership base. Similarly, in considering the performance of a bank staff fund, it is more appropriate to compare it to non-public offer funds than a public offer funds.

Attachment A – CBA and ANZ public offer and staff funds

Fund	Fund type	Rate-of-return (%)			Number of investment options	Asset allocation (%)										Member account profile (age)			
		One-year ROR	Five-year ROR	Ten-year ROR		Cash	Fixed Income	Equity	Property	Infrastructure	Commodities	Other	<35	35 to 54	55 to 64	65+	Age not available		
ANZ and OnePath																			
ANZ Australian Staff	Corporate	4.80%	7.99%	5.26%	7	12.00%	14.00%	56.00%	11.00%	5.00%	3.00%	29.88%	54.58%	12.94%	2.59%				
Oasis Superannuation Master	Retail	0.70%	6.11%	2.42%	901	11.00%	29.00%	49.00%	7.00%	2.00%	2.00%	11.35%	37.11%	24.46%	26.96%	0.12%			
OnePath Masterfund	Retail	1.70%	5.85%	3.26%	142	13.00%	29.00%	49.00%	7.00%	1.00%	0.00%	41.05%	40.01%	11.71%	7.22%				
Retirement Portfolio Service	Retail	0.10%	6.18%	3.76%	886	15.00%	21.00%	56.00%	5.00%	1.00%	3.00%	0.41%	9.06%	17.07%	73.45%				
CBA and Colonial																			
Commonwealth Bank Group Super	Corporate	3.90%	7.73%	6.21%	10	6.00%	44.00%	38.00%	7.00%	4.00%	1.00%	33.14%	49.73%	10.61%	6.52%				
Avanteos Superannuation Trust	Retail	1.30%	5.82%	2.76%	1,967	17.00%	26.00%	47.00%	5.00%	2.00%	2.00%	4.20%	26.26%	28.41%	40.99%	0.15%			
Colonial First State FirstChoice	Retail	1.80%	6.31%	3.38%	734	18.00%	24.00%	43.00%	6.00%	3.00%	6.00%	26.83%	36.90%	17.84%	18.42%	0.00%			
Colonial First State Rollover &	Retail	2.80%	7.14%	3.83%	46	19.00%	10.00%	66.00%	4.00%	1.00%	1.00%	1.78%	50.46%	23.57%	24.19%				
Colonial Super Retirement Fund	Retail	1.50%	6.04%	4.01%	590	23.00%	17.00%	47.00%	2.00%	11.00%	1.00%	8.14%	56.69%	26.01%	9.16%	0.00%			
Commonwealth Essential Super	Retail	2.70%			9	17.00%	16.00%	55.00%	6.00%	6.00%	1.00%	77.42%	18.14%	3.33%	1.10%				
Encircle Superannuation Fund	Retail	1.90%	6.36%		258	13.00%	47.00%	25.00%	7.00%	3.00%	5.00%	1.22%	9.94%	31.22%	57.57%	0.05%			
Star Portfolio Superannuation	Retail	3.20%			404	15.00%	27.00%	41.00%	8.00%	5.00%	4.00%	2.57%	17.56%	40.38%	39.49%				
Symetry Personal Retirement Fund	Retail	1.60%	5.12%	2.41%	1,055	18.00%	27.00%	44.00%	9.00%	0.00%	2.00%	1.17%	26.48%	24.74%	47.56%	0.05%			
Ultimate Superannuation Fund	Retail	1.60%			161	12.00%	24.00%	49.00%	8.00%	0.00%	7.00%	4.28%	23.95%	27.33%	44.44%				

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ANSWERS TO QUESTIONS ON NOTICE

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2016 - 2017

Division/Agency: Australian Prudential Regulation Authority
Question No: 143
Topic: For-Profit Sector Superannuation - Fund Performance
Reference: Hansard page 29 (02 March 2017)
Senator: Gallagher, Katy

Question:

Senator GALLAGHER: [...] Could you confirm that, as of June 2016, \$317 billion of assets were held by these funds that account for nearly 60 per cent of retail fund assets?

Mrs Rowell: I would have to take that on notice.

Senator GALLAGHER: If you can, have a look at that on notice. I have also had a look at the 28 bank owned super funds for which APRA does have a ten-year rate of return. And from my looking at this, only six of them are above the median return of all funds and 22 are below it. Could you confirm that?

Mrs Rowell: I would have to take that on notice.

Senator GALLAGHER: [...] Of those six that are above the median return of all funds over the 10-year return, I think only one of them is open to the public for public offering. The others are staff funds run by the banks, and there is actually quite a difference in return for staff funds run by the bank in all instances. It is anywhere from one and a half per cent to almost 3 per cent higher for the funds that are run for staff than those that are open to public offering. I would like APRA's view on that.

Mrs Rowell: I would have to take that on notice. [...]

Answer:

Refer to the response provided in AET142.