

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Securities and Investment Commission

Question No: 171

Topic: Financial regulation of housing

Reference: Written

Senator: Whish-Wilson, Peter

Question:

1. How is advice regarding investment in property regulated?
2. Is it true that 'property investment advisers' who advise on investment in property—other than through self-managed superannuation funds—are not regulated under laws governing financial advice?
3. Are you aware of circumstances where 'property investment advisers' are receiving conflicted remuneration?
4. Has ASIC provided any recommendation for reform of advice for property investment?

Answer:

1. Real property is not a 'financial product' for the purposes of the Corporations Act 2001 (Corporations Act). This means ASIC does not regulate advice or other financial services in relation to investment in real property. However, advice to a person to establish a self-managed superannuation fund (SMSF) or use an existing SMSF to purchase real property is financial product advice and is something ASIC does regulate. This is because such advice is about an SMSF and an interest in an SMSF is a 'financial product' for the purposes of the Corporations Act
2. Yes, this is true. A person provides a financial service if they, inter alia, provide financial product advice. Under s766B of the Corporations Act, financial product advice is defined as a recommendation, a statement of opinion or a report of either of those things that is, or could reasonably be regarded as being, intended to influence a person's decision in relation to a financial product. As noted above, real property is not a financial product.
3. Property investment advisers who only provide advice to consumers on real property are not prevented from receiving conflicted remuneration. This is because, for the reasons set out above, they are not regulated as financial advisers.
4. ASIC has not provided any recent recommendations for reform of advice on property investment.

In 2013, ASIC released: <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-304mr-asic-warns-real-estate-industry-about-recommending-property-investment-through-smsfs/>.

In 2000, ASIC released: <http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-5-review-of-financial-advising-activities-of-real-estate-agents-interim-report/>.