

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 & 17 February 2005

Question: Add 13

Topic: Superannuation Choice

Hansard Page: E10

Senator Sherry asked:

The federal legislation on super choice allows choice to be overridden in certain circumstances: Australian workplace agreements and registered industrial agreements. The fees have to be disclosed, obviously, but how would you prevent a commission-based fee being applied in those circumstances where the employee is bound, effectively has no choice? The fee might be disclosed, but they have no choice.

Answer:

The Australian Securities and Investments Commission (ASIC) oversees disclosure and conduct requirements in relation to financial services, including in relation to superannuation products. The following observations are made in relation to laws under ASIC's administration.

The requirements in Chapter 7 of the *Corporations Act 2001* (Act) do not seek to address issues in relation to whether the providers of financial products may properly make arrangements that include the payment of remuneration (including commissions) in relation to the provision of financial services. However, as the question has noted, the Act does expressly seek to regulate the disclosure of any such remuneration. For example, paragraph 1013D(1)(e) of the Act requires the disclosure by a product issuer (in the superannuation context by the fund's trustee) of any commissions or other similar payments that will or may impact on the amount of return. From 1 July 2005, this will be subject to the dollar disclosure requirements.

The requirements in section 154 of the *Superannuation Industry (Supervision) Act 1993* (SIS) and in Reg 3.10 of the *Superannuation Industry (Supervision) Regulations 1994* seek to control several aspects of the payment of commissions by the trustee of a public offer superannuation fund. This includes the types of commission payable (e.g. for procuring applications), necessary pre-conditions (e.g. permitted in trust deed and notified amount or rate to the applicant in writing before issue) and the type of persons to whom the commissions can be paid. These provisions do not seek to address issues in relation to whether a trustee may properly make arrangements under which such commissions might be paid.

The prudential supervision of the superannuation industry is carried out by the Australian Prudential Regulation Authority (APRA).