

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 126

Topic: Senate

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Senator Cormann asked:

Senator CORMANN—You went through a very impressive and very extensive list of projects but I thought there was one missing, which was commissioned by the Senate and which has a deadline of 31 May 2011—namely, the report commissioned by the Senate on the design of a process for the selection and ongoing review of superannuation funds to be included in modern awards or enterprise agreements as default funds. Where is that project at?

Dr Kirby—I am aware of the order of the Senate last year and the renewal of that order this year. Let me start by saying that the commission has the utmost respect for the Senate and none of our action so far, nor what I am about to say, should be interpreted as any disrespect. We have previously complied with requests from the Senate to supply documents. For instance, in 2009 the Senate asked us to supply documents with respect to the Carbon Pollution Reduction Scheme and we did that, including several internal minutes which were supplied. The issue this time around is really about creation of new documents. I guess, whilst I have no legal training and I do not want to enter a legal debate, the issue is, as we interpret it, whether we are compelled to produce a document which relies on information that we do not have. The reality is that the commission at the present time has no information on default super schemes so we are just simply not in a position to create such a document for the Senate. That is really where it is at at the moment. We of course will be listening to wiser heads on the legalities of all this but at the moment that is where it sits.

Senator CORMANN—Thank you for your explanation. That sheds some light on where it is that you are coming from, which would help the Senate address the reasons for your current predicament, I guess, from your point of view. But I thought I would just share with you that there is a longstanding history of governments of both persuasions asking statutory agencies to create reports, including reports created for the purpose of complying with the order in relation to documents that are not held by the agency—

Senator Wong—Senator—

Senator CORMANN—There is a question in this. Please, I am being quite sincere on an issue that the Senate has occupied a lot of time trying to get itself on top of. I have waited patiently to ask my question. Invariably, past orders of the Senate were initiated by cross-bench senators or by senators of the opposition. That is the nature of the way the Senate operates. But they were passed by the Senate and a majority of the Senate supported them. I will give you some examples to put into context for you a request that was made to the Productivity Commission. I will put that into the context of past instances where similar statutory agencies have complied with them. I guess on notice I would like you to get back to the Senate to see whether the information in any way changes your perspective. I draw your attention in particular to, for example, an order of the Senate initiated by Senator Murray asking the ACCC to report on issues relating to grocery retailers, which involved the creation of documents not held by the ACCC at the time. Similarly, the ACCC was asked by the Senate on a motion initiated by then Democrat Senator Allison to report on tobacco and health related issues. In fact the ACCC was ordered to do so on two

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occasions and complied with that order. In more recent times, Senator Fielding initiated an order for the Australian Securities Investment Commission and the Future Fund Board of Guardians to report on issues relating to the disposal by the Future Fund of shares in Telstra. Over the last 30 years there is a long track record, whether it was the Hawke, Keating or Howard governments, of statutory agencies created by the parliament complying with orders of this nature. I guess the advice from the Clerk of the Senate is that, unless the act which is governing the operation explicitly rules that out, then under section 49 of the Constitution we are entitled to make the request and we are entitled to expect a response and compliance with that request unless there are clear and articulated public interest reasons as to why it would not be in the public interest. I thank you for your indulgence on this. I thought it was important to put it on the record to enable you to on notice provide an answer to this committee as to the explanation I have just provided. I also seek leave to table the list of precedents so that it can be shared with the Productivity Commission formally and so that enables you to perhaps on notice provide an answer to see whether any of this changes your view on these things.

Senator Wong—Obviously the relevant minister, which would be the Assistant Treasurer, will actually need to respond. I have not gone through *Odgers* and looked at whether or not all of those orders were complied with nor investigated this matter in detail. But, in general, my understanding of orders for production has been for documents in existence. Perhaps if you had an order for production of a document which was effectively pulling together documents you already had in existence and indexing them or providing some summary, but you are actually seeking more than that. Perhaps I have not looked at every order for production, but it is a very significant further step to be suggesting that the Senate itself can order a statutory body to in fact undertake a further inquiry. That is effectively what your motion is doing. I would invite senators, including cross-benchers, to consider whether or not that is really appropriate. I understand you want to be in government but statutory authorities do not generally simply go away and do inquiries because one part of the parliament tells them to in relation to policy issues. But Dr Kirby has made his response. I understand it is also a matter that the Assistant Treasurer will have to respond to as the responsible minister, and I am not sure we could take it much further than that.

CHAIR—I will just take it that the committee agreed that the document be tabled.

Answer:

The Chairman of the Productivity Commission, Mr Banks AO, outlined the process by which Productivity Commission reports are commissioned in his letter to the Clerk of the Senate, Dr Laing, dated 13 December 2010.

The Government will ask the Productivity Commission to design a process, prior to the introduction of MySuper on 1 July 2013, for the selection and ongoing assessment of superannuation funds that are nominated as default funds by employers in modern awards and enterprise agreements.