

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 31 May to 2 June 2005

Question: Bud 85

Topic: APRA – Investigations of Mr Steve Huggett & Mr Jim Welch

Hansard Page: E49

Senator Sherry asked:

1.

Senator SHERRY—I wish to raise brief two constituency matters that I have had referred to me. The individuals do not mind my raising it here. I had a complaint from Mr Steve Huggett concerning his transfer as a member from the Telstra Superannuation Scheme, TSS, to the new division of TSS, known as NDC Super Advantage. In some respects, it is somewhat like the AXA issue. He claims he was disadvantaged and not fully informed when he transferred from the defined benefit to an accumulation fund. He believes that TSS were deceptive and misinformed him. I understand he has been in contact with APRA and a number of other agencies, including ASIC.

Senator SHERRY—I think the SCT, too. Can I request you to investigate this further. I did not give you notice of the individual case, but he believes that his case has not been appropriately investigated or actions taken that he believes are justified given what he believes is the lack of information he was given at the time.

2.

Senator Sherry –

Does anyone have knowledge of the collapse of the so-called—a bit ironic in the current context—Freedom of Choice Monthly Income Fund?

Perpetual Trustees took over the monthly income fund from AXA and National Mutual on 12 December 2000. Australian Unity notified investors of the collapse of the PAM/MIP on 16 November 2000. Specifically, it involves a Mr Jim Welch, who again believes that APRA and ASIC have not sufficiently investigated the case; nor in this case has he received sufficient remedy, or in fact any remedy, and compensation for what occurred in this instance.

Answer:

1. Following a restructure in Telstra Corporation Limited (Telstra) in April 1999, certain employees resigned their employment with Telstra on 14 April 1999 and commenced employment with a wholly owned subsidiary company called NDC Limited (NDC) on the next day.

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 31 May to 2 June 2005

As part of the restructure, a new scheme was set up within the Telstra Superannuation Scheme (TSS) to cater for the NDC employees (called NDC Advantage); NDC Advantage was an accumulation-style fund within TSS.

In January 2003, Mr Huggett wrote to APRA in relation to the following two issues:

- a query about the legality of reclassification of benefits by the Fund Trustee as at the date of the employees' resignation from Telstra; and
- concerns about the adequacy of disclosure by TSS to its members about the impact of the benefit reclassification.

These concerns were extensively investigated by APRA.

Based upon the information available, APRA concluded that there was no evidence that the reclassification of benefits was illegal.

As Mr Huggett wrote to both APRA and ASIC, both agencies liaised about the issues. APRA was of the view that the second issue, being a disclosure matter, fell within ASIC's jurisdiction; queries in relation to that investigation are best directed to that agency.

The provisions of Section 56 of the *Australian Prudential Regulation Authority Act 1998* (APRA Act) preclude disclosure to Mr Huggett of the full details of APRA's activities in relation to TSS.

2. Perpetual Trustees Consolidated Limited (Perpetual) (previously known as AXA Trustees Limited) remains the MIP scheme trustee and PAM, the fund manager, is in liquidation. Australian Unity Funds Management Limited (AUFM) continues to be the approved trustee and master fund manager for the Freedom of Choice Masterfund.

In relation to compensation, Mr Welch has confirmed that following settlement with his financial advisor an amount of \$20,000 was repaid to him out of his investment of \$25,000.

It appears that MIP funds were invested in the Enhanced Income Trust (EIT). The MIP and/or EIT are unlisted trusts which are not regulated by APRA. APRA understands that ASIC has conducted inquiries into these matters but APRA is not in a position to respond on that regulator's behalf.

In the case of Mr Welch and other investors, APRA does not have the legislative power to take any direct action to retrieve losses. The *Superannuation Industry (Supervision) Act 1993* (SIS Act) legislation provides for an application to be made by the approved trustee under Part 23, but the approved trustee needs to establish a case of fraud or theft and show that there has been a substantial diminution of the assets of the fund.

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 31 May to 2 June 2005

To date, APRA's role has been to constantly monitor AUFM's actions to retrieve members' funds, including Mr Welch's.

AUFM has continued discussions with Perpetual to determine whether any compensation is available to members. Perpetual has acknowledged that they are the scheme trustee of the MIP; however since neither AUFM nor Perpetual were involved at the time of the initial investment, neither is willing to provide any compensation at this stage.

AUFM is investigating the possibility of making an application under Part 23 of the SIS Act. At this point, discussions with AUFM indicate that the level of information required is not currently available and AUFM is presently reviewing its options.

APRA understands that AUFM intends to keep affected members regularly informed of progress and APRA will continue to closely monitor developments.