

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 31 May to 2 June 2005

Question: Bud 106

Topic: APRA - Industry Superannuation Funds and Advertising

Page: Written

Senator Watson asked:

1. In relation to the recent prominent national newspaper and television advertising campaign undertaken by Industry Fund Services Pty Ltd on behalf of a number of participating industry superannuation funds, has APRA determined how this advertising is funded?
2. APRA recently wrote to all Superannuation Trustees stating that "imposing marketing expenses on current members primarily to attract new members (would be) difficult to justify" under the sole purpose test. Does APRA agree that this mass advertising campaign is aimed at attracting new members and/or employers to industry funds?
3. In a recent speech to the ACTU Superannuation Trustee Forum the ACTU Secretary, Greg Combet commented on the need for industry funds to invest member funds in marketing campaigns to attract members of commercial master trusts to industry funds. Is APRA concerned that his comment indicates an intention of industry fund trustees to breach the sole purpose test?
4. Does APRA intend to take action to protect members' funds being spent in breach of the sole purpose test?
5. The Chief Executive of the Australian Retirement Fund was quoted recently as saying that "*ARF wanted to build economies of scale to benefit members...*". The Executive Chairman of Industry Funds Services has also made similar statements in the media. What action has APRA taken to reinforce its view previously expressed to this committee that this reasoning is not acceptable to APRA?
6. If APRA determined that members' funds have been applied contrary to the sole purpose test, how would these funds be recovered and members reimbursed, in the case of a retail fund and in the case of an industry fund?

Answer:

1. Yes. The advertising was funded by the participating industry funds contributing various amounts to Industry Fund Services Pty Ltd. APRA has

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ascertained that the participating superannuation fund trustees have allocated these amounts from their advertising budgets. The source of funds for the advertising budgets is the administration expense which is charged by the funds. The administration expense is disclosed to all members of the funds as part of each superannuation fund's Product Disclosure Statement (PDS).

APRA has clarified in its industry communication that trustees could apply a part of fees and charges to advertising.

2. APRA has no evidence that the advertising campaign was funded from member balances (after disclosed fees and charges had been debited). Trustees are able to defray out of their fee revenue advertising aimed at attracting new members and/or employers to the funds. The review program for superannuation funds includes an examination of expenditure such as advertising to ensure that there are no breaches of the sole purpose test.
3. There is no evidence that the trustees of any of the participating industry funds have engaged in, or intend, a breach of the sole purpose test (as trustees are allowed to pay for advertising out of fee revenue). As detailed in the response to question two above, the review program for superannuation funds includes an examination of expenditure such as advertising to ensure that there are no breaches of the sole purpose test.
4. No – not based on currently available information. However it is worth noting that APRA are continuing to monitor compliance by funds.
5. APRA's review program for superannuation funds includes an examination of expenditure such as advertising to ensure that there are no breaches of the sole purpose test.
6. If APRA determined that members' funds had been applied contrary to the sole purpose test there are a number of options available under the legislation to have the funds recovered and members reimbursed.

Section 215 of Superannuation Industry (Supervision) Act 1993 (SIS Act) provides, inter alia, that if the Court is satisfied that a person has breached the sole purpose test and the superannuation fund has suffered a loss or damage as a result, the Court may order the person to pay to the superannuation fund compensation of such amount as the order specifies.

Section 52 of the SIS Act provides for various covenants to be included in the governing rules of all superannuation funds. One of the covenants is to ensure that the trustee's duties and powers are performed and exercised in the best interests of the beneficiaries. Section 55 of the SIS Act provides that a person who suffers a loss or damage as a result of conduct of another person, in contravention of the covenants, may recover the amount of the loss or damage by action against that person or against any person involved in the contravention.

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Section 315 of SIS provides, inter alia, that if a person has engaged, is engaging or is proposing to engage in conduct that constitutes, or would constitute a breach of the sole purpose test, APRA may apply to a Court for an injunction to restrain the person from engaging in the conduct.

These options apply to all superannuation funds including retail and industry funds.