

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2015 - 2016

Department/Agency: Australian Securities and Investment Commission

Question: AET 88

Topic: Superannuation inducements

Reference: Hansard page no. 35 - 11 February 2016

Senator: Ketter, Chris

Question:

Senator KETTER: Given the importance of selection of fund to employees' long-term financial interest—their retirement—is it time for a look at the legislation to pick up what you would consider to be inducements?

Mr Tanzer: I think fundamentally that is a policy issue for government. What I would say about that is—as I have mentioned before in this place—that one of the issues with section 68A is that it is not a criminal provision; it is a civil provision. For a person who suffers damage as a result of an illegal inducement, it provides a right to take action to recover that damage. Ancillary to that, under its licensing powers ASIC has some rights to take action—for example, against a trustee if we found a case like this, on the grounds that they were not discharging their obligations efficiently, honestly and fairly, which is a general licensing obligation. But that is an ancillary type of remedy, rather than getting at the heart of the issue. Through our review, we found that there are difficulties in the implementation of specific enforcement action arising out of the section as it was designed, partly because it is a civil provision and does not carry a criminal penalty and partly because it is quite clear that the inducement has to be offered to the employer on condition that employees switch, and that is a difficult evidentiary burden to make.

Senator KETTER: But the effect of a default status for a fund is going to be that people automatically go into a particular fund offered by the employer at the point of engagement.

Mr Tanzer: The default fund system, of course, does not always give that choice to the employer. Some of that is also based in awards. But where the employer does have the choice about the default fund, which is in a large number of cases, the employer plays a very important role. It is an important responsibility, which is exactly why we are publishing this material. It is a little unusual for us, and that is partly why I make such an emphasis on this. Our MoneySmart material is usually directed to investors, consumers and the like; this is material specifically directed to employers.

CHAIR: I really am intrigued, because I did not know that this existed. You say in the retail sector there are inducements—banking products and things like that. What would be an example of that?

Mr Tanzer: I should be very careful about the language that I am using. We did not find evidence, across our review, of inducements within the meaning of section 68A being offered. We did find examples of the type of thing that the UMR research suggested were inducements, such as offers of hospitality. Some of it might be cross-selling of banking or insurance or other types of products.

CHAIR: Are you talking across retail and industry funds?

Mr Tanzer: Yes.

CHAIR: So this is omnipresent across the whole sector. It was not just industry; it was not just retail; it was the whole lot.

Mr Tanzer: No, it is that the types of inducements—if they are, for example, tickets to sporting events—

CHAIR: Really?

Mr Tanzer: Yes.

CHAIR: Wow, I am in the wrong fund!

Mr Tanzer: Or a range of types of corporate hospitality, obviously. That is quite commonly offered. What is different, of course, is that it is not offered on condition that the employer switch. That does not mean—

CHAIR: So there is no difference between retail and industry, no rotten boroughs; it is just an issue across—

Mr Tanzer: We did not see a discernible difference. I was making the point that in vertically-integrated entities, obviously, there is a capacity to cross-sell banking services, which may not exist in other sectors, although there are some in the industry sector that also have banking affiliates or—

CHAIR: Can you give me an example.

Mr Tanzer: I will take it on notice and see if I can give you a specific example. The sorts of things that had been raised with me were more about free access to other services within the firm.

Answer:

From ASIC's recent review of a cross-section of industry and retail superannuation funds, we found that incentives or benefits are routinely offered to employers by some trustees. The types of benefits offered by trustees within vertically-integrated entities that we saw were fee discounts on other products offered by the group, such as fee discounts on deposit and lending products and discounted interest rates on home loans. Other types of benefits we saw being offered across the industry include:

- entertainment - including tickets to sporting events such as State of Origin, and the NRL World Cup,
- hospitality - including conference dinners,
- education - including seminars, information material such as fact sheets and flyers on a range of topics including employers' superannuation obligations, recent legislative changes and setting up insurance for employees,
- access to free clearing house services, and
- financial advice.

Not all trustees offer all types of benefits, although all trustees we reviewed provided some kind of educational information to employers. Some trustees provide certain benefits as a matter of course to employers, for example clearing house services, while others exercise a discretion whether to offer a benefit.