

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

29 May – 31 May 2012

Question: BET 426-433

Topic: Life Insurance Companies

Hansard Page: Written

Senator Madigan asked:

426. Is a policy of life insurance a contract *uberimmae fidei* (of the utmost good faith)?
427. What, if any, is the legal basis on which a life insurance company can purport to distribute an investment loss to a traditional life insurance policy (whole of life or endowment) described in the policy contract as a "with profit" policy?
- (a) What case law (if any) is there to say that a profit includes a loss?
- (b) Why is it not either misleading or deceptive conduct or unconscionable for a life insurer to charge a policyholder owning a policy described as "with profit" with a loss?
428. What notice is a life insurance company required to give to a policyholder before forfeiting a policy where the surrender value has fallen below a loan outstanding?
429. Is a life insurance company required to draw a policyholder's attention to a fall in the surrender value of a policy?
- (a) If not, why not, given that insurance is a contract *uberrimae fidei*?
- (b) What legal advice does the ACCC have on this question and would the ACCC please provide all such advice to the Committee?
430. If a life insurance company does not draw a policyholder's attention to a fall in the surrender value of a policy or the imminence of lapse without explanation, cannot such silence constitute misleading or deceptive conduct or unconscionable conduct in terms of trade practices law?
- (a) Would the ACCC please provide all legal advice it has on this question?
431. Would the ACCC please provide all papers it has or correspondence it has had with or from Treasury or ASIC relating to the losses or financial stability of the life insurance industry during and after the GFC and/or the treatment of policyholders in the industry's dealing with GFC losses?
432. Would the ACCC please provide all papers it has on the legal and economic aspects of allocating investment losses to holders of traditional or non-traditional life insurance policies?

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433. Will the ACCC please provide its files on the above matters for inspection and copying by interested policyholders or their representatives free of charge, as being the interested parties whom the ACCC is supposed to protect?
- (a) If not, would the ACCC please provide the files to the Senate through this Committee for inspection by Senators or their representatives?

Answer:

426-433.

The matters raised by questions on notice BET 426 to 433 fall beyond the remit of the Australian Competition and Consumer Commission and its principal responsibility of administering the *Competition and Consumer Act 2010*. These matters focus on issues that may be better directed to the Australian Prudential Regulation Authority and the Australian Securities and Investment Commission.