

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Supplementary Budget Estimates
2014 - 2015

Department/Agency: ASIC

Question: SBT4282

Topic: Review of retail life insurance

Reference: Hansard page no. 67-68 - 22 October 2014

Senator: Bushby, David

Question:

Senator Bushby: ... Okay, well I will move on from there to something which I have already touched on a number of times, and that is ASIC's review of retail life insurance. I found that very interesting, particularly in the context of the fact that there have been numerous media reports recently of unions who have been entering into life insurance arrangements to cover their members. Is ASIC aware of those media reports and had a look at all at whether that is in fact occurring?

Mr Kell: Could you be a little more specific? I mean, obviously life insurance—

Senator BUSHBY: Most of the reports that have been written are about a reason out of the Heydon royal commission. The evidence has been presented to that.

Mr Kell: We have seen some recent media reports but it is not something that we have investigated or reviewed.

Senator BUSHBY: The reason why I am asking is that I am just curious to know, if a union is negotiating with life insurance providers, would that invoke any requirements to have an AFSL?

Ms Bird: You would really need to know the circumstances in which they were doing them and exactly what they were doing.

Senator BUSHBY: So, would the reports or the evidence that has been educed before the royal commission be something that would pique your interest in having a closer look at those circumstances?

Ms Bird: I think I would have to take that on notice. I think someone has drawn it to our attention, but I am sorry, I cannot remember the details.

Senator BUSHBY: If you take that on notice that would be appreciated. If you could also, when you take it on notice, have a look at—if these reports are true—whether they would also be subject to the best interest duty in making those decisions and whether the payment of any commission to the union in return would be something that would be of interest to you. That is fine, thank you.

Answer:

1. ASIC is aware of the recent media reports about unions entering into arrangements to provide their members with insurance.

ASIC adopts a risk-based approach to our surveillance and enforcement activities and focuses on those entities or activities that have the greatest market impact. When ASIC considers whether to pursue a potential breach, including any reports to ASIC in relation to unions, we consider a range of factors, including whether we have sufficient grounds to suspect that a breach has occurred, and whether regulatory intervention would be for the benefit of the broader community beyond the affected individuals.

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2. Section 911A of the *Corporations Act 2001* requires a person who carries on a financial services business in Australia to hold an Australian financial services (AFS) licence, unless an exemption applies. A 'financial service' includes, amongst other activities, providing financial product advice and dealing in a financial product (s766A). Whether a union is carrying on a financial services business will depend on the particular details of its operations.

A number of legislative exemptions and class order relief from holding an AFS licence have been provided. For example, ASIC Class Order [08/01] *Group purchasing bodies* provides that group purchasing bodies are not required to hold an AFS licence when certain conditions are met. Group purchasing bodies are persons who arrange or hold risk management products to cover other persons' risks (eg sporting associations that arrange insurance for members) but who do not:

- issue risk management products (other than interests in a risk management scheme); or
- provide any financial product advice (other than as a result of providing certain general information about the risk management product).

A group purchasing body would not be entitled to the relief in [CO 08/01] if they receive any form of remuneration (including commission) or other benefits that is not reasonably attributable to the group purchasing activity, except for:

- payments that are paid over in full to those who pay for cover (e.g. commissions rebated to those covered) within a reasonable period;
- payments from persons to be covered who are members of the group purchasing body or have another connection with the group purchasing body (e.g. employees); and
- payments to cover the costs reasonably incurred in providing the group purchasing arrangement.

Unions that arrange the purchase of risk insurance for its members may fall within [CO 08/01], however, where they receive remuneration, or other benefits, that are not reasonably attributable to the group purchasing activity, and the remuneration does not fall under one of the exemptions to this rule, the union may be required to hold an AFS licence.

3. Where a union holds an AFS licence, or is a representative of an AFS licensee, and the union provides personal advice to a retail client, the best interests duty will apply (s961B). The ban on conflicted remuneration applies when an AFS licensee or representative provides either personal or general advice to a retail client (Div 4 of Pt 7.7A). There is an exemption from the ban on conflicted remuneration for benefits that relate to general insurance and life risk insurance (with the exception of certain policies inside superannuation). If a union is not required to hold an AFS licence under s911A, neither the best interests duty nor the ban on conflicted remuneration will apply.

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As mentioned in our response to question 1, ASIC adopts a risk-based approach to our surveillance and enforcement activities and considers a range of factors in determining whether we will pursue a potential breach of the laws we administer.