

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

21 – 22 October 2009

Question: sbt 19

Topic: Corporations Act – Section 945A

Hansard Page: E135-6

Senator BUSHBY asked:

Senator BUSHBY—I have some specific questions. What assessment did ASIC undertake to determine an appropriate mechanism to deliver single-issues advice which resulted in the removal of investor protections—that is, the exemption from the Corporations Act, section 945A for super trustees?

Mr D'Aloisio—This is the intra-fund advice?

Senator BUSHBY—Yes, that is right—Regulatory Guide 200.

Mr D'Aloisio—The intra-trust advice and the changes that were made that we announced were after very extensive consultation with both Treasury and industry. That led to the changes being announced some months ago.

Senator BUSHBY—Was there any impact—

Mr D'Aloisio—And we made it clear that it was a clarification of the way that 945A had been interpreted and applied by trustees of super funds. We really gave them some comfort that there were areas of statements they could make, assistance they could provide, to members without being worried about contravention of 945A.

Senator BUSHBY—Was the impact of that clarification to other providers of advice subject to cost-benefit analysis prior to the provision of that clarification exemption?

Mr D'Aloisio—I can take that on notice and look at it more carefully. My recollection is that that sort of cost-benefit analysis would not have been needed. We were looking at clarifying the law. If you are asking, 'Would there have been a shift away from people getting financial advisors to advise them on that issue and then going to the trustees,' we have not seen that. Again, I can take that on notice, have a look at it for you and let you know. As I said, it was essentially around clarifying how the law operates so that people have better guidance. We would not have anticipated it having a significant impact on—

Senator BUSHBY—Certainly it has been indicated to me that it has had an impact.

Mr D'Aloisio—It would be useful for them to let us know that. I would not mind if they would write to us and let us know what that impact is and how it has worked. We will talk to the FPA and other associations. I am certainly not aware of it, but I will take it on notice and have a look at it.

Senator BUSHBY—Good.

Answer:

Yes, in developing its final position on *Regulatory Guide 200: Advice to super fund members* and its accompanying relief under ASIC Class Order [CO 09/210], ASIC met the Office of Best Practice Regulation's requirements for best practice regulatory impact analysis. This required consideration of the regulatory and financial impact of our proposals to release regulatory guidance and grant relief to facilitate advice to super fund members. This analysis

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is publically available in *Advice to super fund members: Regulation Impact Statement (RIS)* at www.asic.gov.au.

The RIS assesses the problem that our proposals are confronting, barriers to the provision of intra-fund advice and why government action is required. It then deals with the likely compliance costs to be incurred as a result of our proposals, their likely effect on competition, and other impacts, costs and benefits on members, super fund trustees, other providers of financial advice and government. It also considers the likely impact of the alternative option – maintaining the status quo.

Paragraphs 38–42 of the RIS specifically discuss the impact of our proposals on entities that are not super fund trustees, such as financial advisers and outsourced advice providers. The analysis states:

'...This limitation is designed to preserve adequate investor protection. Unlike super fund trustees, these providers are not subject to onerous existing obligations to super fund members under statute and common law comparable to the obligations of super fund trustees.

These entities will still be able to provide intra-fund advice that complies with section 945A. Our proposed guidance on how to comply with section 945A and, specifically, how to 'scale' advice under that provision in an intra-fund context, will assist entities.

The provision of intra-fund advice is not mandatory. Entities that choose not to provide intra-fund advice will not incur any compliance costs.

Entities that choose to provide intra-fund advice in accordance with section 945A will incur compliance costs. These costs will be the same as the compliance costs that a super fund trustee would incur if it provided intra-fund advice in compliance with section 945A, or these costs are likely to be comparable with the compliance costs that a super fund trustee would incur if it provided intra-fund advice under our proposed relief...'.