



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: C2005/1603  
Contact Officer: Gavin Jones  
Contact Number: (03) 9290.1475

24 April 2006

Mr Ross Patterson  
Partner  
MinterEllison  
GPO Box 521  
SYDNEY NSW 2001

Dear Mr Patterson

**Third line forcing notification lodged by  
Australian Administrative Services Pty Limited (N31464)**

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 22 September 2005.

Australian Administrative Services (AAS) has described the conduct the subject of its notification as follows:

AAS proposes to supply or offer to supply SuperClear to employers on the condition that where an employee has no chosen fund, the employer will under the *Superannuation Guarantee (Administration) Act 1992*, make superannuation guarantee contributions to any one of the funds administered by AAS, in respect of that employee.

Legal immunity conferred by the notification commenced on 6 October 2005.

In my telephone conversation with Kathryn Conway of your office on 2 November 2005, I advised that, as is practice in respect of all financial services related notifications, the ACCC had consulted the Australian Securities and Investments Commission (ASIC) regarding the notifications and that ASIC had advised the ACCC that it was considering any issues that may or may not arise under section 68A of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act).



Section 68A of the SIS Act states:

- (1) A trustee of a regulated superannuation fund, or an associate of a trustee of a regulated superannuation fund, must not:
  - (a) supply, or offer to supply, goods or services to a person; or
  - (b) supply, or offer to supply, goods or services to a person at a particular price; or
  - (c) give or allow, or offer to give or allow, a discount, allowance, rebate or credit in relation to the supply, or the proposed supply, of goods or services to a person;

on condition that one or more of the employees of the person will be, or will apply or agree to be, members of the fund.

I note that section 68A(4) of the SIS Act provides for several exemptions to these provisions.

ASIC have recently advised that they are still considering whether the notified arrangements raise concerns under the SIS Act. The purpose of this letter is to advise that, while the ACCC does not intend to take any further action in relation to the notification at this stage, should ASIC raise concerns in relation to the application of section 68A of the SIS Act to the notified conduct, the ACCC would review the notification at that time. This is consistent with any notification where the ACCC may act to remove the immunity afforded by a notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

For your information, the ASIC officer dealing with this matter is Mark Bland. Mr Bland can be contacted on (03) 9280 3209. I have copied this letter to Mr Bland.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Gavin Jones on (03) 9290 1475.

Yours sincerely



Scott Gregson  
General Manager  
Adjudication Branch

C.C. Mark Bland, Section Manager, Superannuation, Life Insurance and Friendly Societies, Australian Securities and Investments Commission.