

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Oversight of ASIC, the Takeovers Panel and the Corporations Legislation

2022 - 2023

**Division:** Foreign Investment Division  
**Topic:** ASIC, Takeover Panel, ASX interactions  
**Reference:** Spoken  
**Senator:** Deborah O'Neill

**Question:**

CHAIR: Now I want to ask your views on the adequacy and effectiveness of the activities of ASIC, the Takeovers Panel and the ASX; interactions between FIRB and ASIC, the Takeovers Panel and the ASX; legislation administered by ASIC, the Takeovers Panel and the ASX; and application processing times and how they differ across FIRB, ASIC, licences and Takeovers Panel processes. There's a fair bit there, but if you can give me an overview—  
Ms Kelley: Sure.

CHAIR: And then take what you need to on notice, just so we get something on the record.

Ms Kelley: Yes. I might just make a comment. In terms of the ASX, I think that our interaction tends to be more around when companies need to make disclosures and the disclosure requirements. So we might not have that direct engagement with the ASX, but that's where our engagement with the company, with the investor or their adviser, is critical for us to understand those deadlines. So if they have some mandatory disclosure requirements, if they've got particular commercial deadlines, that's where we say to them, 'You need to talk to us.' We would not probably have—

CHAIR: You're connected by the ASX but not to the ASX.

Ms Kelley: Not to the ASX. So that's that one. In terms of the Takeovers Panel, they are obviously within Treasury as well, but we have very strict demarcations between the Foreign Investment Division and the Takeovers Panel. Generally, they're not a part of our normal consultation mechanism. They would only get involved if there is a dispute—so if an aggrieved party goes to them. They're obviously not involved in every foreign acquisition. So, if a grievance were raised ahead of one of our assessments being finalised, we could consider it as part of the national interest. One of the tests under the national interest is the character test. So we can consider some of that information, but generally we try to keep very clear lines between our assessments, and then, if there's a dispute that happens, that goes to the Takeovers Panel.

CHAIR: Okay, that's helpful.

Ms Kelley: That's those two.

CHAIR: Then, of course, there's ASIC.

Ms Kelley: Yes. I mentioned before that we have our consultation partners that we go to. There are around 35 agencies in that pool of consultation partners. ASIC, APRA, and AUSTRAC are certainly part of that consultation process, not for every investment but for the ones where we need their views. So we also go to them. In terms of ASIC's processing times, that's a question really for them. In terms of our expectations of our consultation partners, we do set a time frame. If we've gone out to consult with you, then we want you to come back in—I think it's—

Dr Evans: Ten days.

Ms Kelley: Ten days maximum, and, in fact, we're trying to encourage people to do it quicker

than that if possible.

CHAIR: And how sticky does it get when ASIC gets involved? Is it prompt or is it slow?

Dr Evans: I think we've found them pretty good.

Ms Kelley: Yes, I don't think they're our sticky ones, I'd say.

CHAIR: Okay, that's good to know. If there's anything further you can provide on notice, that would be good.

**Answer:**

The Treasury's Foreign Investment Division consulted with the Takeovers Panel and identified one case where foreign investment was relevant to the Panel's decision. That case was in 2008.