

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 12

Topic: Telecommunications (Interception and Access) Act 1979

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Senator LUDLAM asked:

Senator LUDLAM: Just one last one on notice, if I could, because time is short: could you provide for us the precise section of the act—I presume it is going to be the Telecommunications (Interception and Access) Act 1979—on which you are resting your power to even issue these notices in the first place? Could you provide the committee, on notice, with where you think your legal authorisation to actually issue these letters in the first place derives from? There is a bit of ambiguity about how you are even able to do that. I cannot write to IRNet and ask that a website that offends me be knocked over.

CHAIR: You can ask that question.

Senator LUDLAM: If they could just provide that on notice, that would be fine.

Mr Mullaly: We do not provide legal advice, that is all.

Senator LUDLAM: It is not legal advice. I want to know how what you are doing is lawful.

Mr Mullaly: It is not sites that offend us; it is illegal activities. These are people who are defrauding Australians on a continuous basis.

Senator LUDLAM: I am not going to that.

Mr Mullaly: Well, you mention offending sites. These do not offend; they are illegal.

Answer:

ASIC's functions and powers include the general administration of the Corporations Act (s.5B of the Corporations Act) which includes, relevantly, provisions imposing criminal penalties for providing financial services without a licence (s.911A), inducing persons to deal (s1041F) and dishonest conduct in relation to financial products or services (s1041G). ASIC also has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system (ss.12A(2) ASIC Act), as well as investigating breaches of the Corporations and ASIC Acts (Part 3 ASIC Act). Finally, ASIC has the "power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions" (ss.11(4) and 12A(6) ASIC Act).

Subsection 313(1) of the *Telecommunications Act 1997* (Cth) (Telecommunications Act) provides that carriers must do their best to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories. Further, ss.313(3) of the Telecommunications Act provides that a carrier must give officers and authorities of the Commonwealth such help as is reasonably necessary for enforcing the criminal law and laws imposing pecuniary penalties.

ASIC is an authority of the Commonwealth and ASIC staff are officers of the Commonwealth.