

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: Australian Securities and Investments Commission

Question: BET 690-699

Topic: Commonwealth Bank takeover of BankWest

Reference: Hansard pp29-30, 4 June 2014

Senator: Eggleston

Question:

690. I refer to an article in *the Australian* dated 6 August 2013 titled 'ASIC reviews CBA resort dispute'. I seek to table that document. I'd like to read a brief excerpt:

"The corporate watchdog is making inquiries into property developer Rory O'Brien's \$512 million unconscionable conduct claim against Commonwealth Bank."

The article quotes Mr O'Brien as saying "I was contacted by an ASIC officer who said he wanted to review my evidence" and goes on to say "A spokesman confirmed ASIC had obtained the affidavit but said at this stage there was no formal investigation because the commission was only reviewing the case".

How does ASIC reconcile the answer to the question on notice that no, it did not conduct a review of the Commonwealth Bank takeover of Bankwest yet the article in *the Australian* specifically refers to a review?

691. Part of your response to the question on notice stated that ASIC found there was "insufficient basis to warrant ASIC's regulatory intervention" into allegations of misconduct by the Commonwealth Bank and Bankwest. In reaching this conclusion, what evidence did ASIC request from the Commonwealth Bank and Bankwest, if any?

692. Did ASIC seek evidence relating to the relevant Basel ratios and provisions for the Commonwealth Bank and Bankwest during the takeover? If not, why not?

693. Putting aside for a moment the questions from Senator Eggleston and your answer, what was the outcome of the "review" ASIC was conducting that was referenced in *the Australian* news article?

694. I also refer to an email at 11.51am on 24 May 2013 from Mr Patrick Foran at ASIC's misconduct and breach reporting division to an aggrieved customer (subject line: COMMONWEALTH BANK OF AUSTRALIA, BANK OF WESTERN AUSTRALIA LTD [SEC=IN-CONFIDENCE]; ASIC reference 56799/12). In that email Mr Foran states "... ASIC is considering all the material that has been provided in relation to the alleged conduct of Bankwest and/or the CBA". Mr Foran goes on to refer to the "potential significance of the alleged issues" and that "a number of reports have been received". What was the outcome of Mr Foran's investigation? Did ASIC find any evidence of misconduct or impropriety by directors or employees of either the Commonwealth Bank or Bankwest, or its agents, as part of the former's takeover of the latter?

695. Does ASIC have a process for recording complaints made?

696. How are complaints assessed to determine whether further ASIC action is required?

697. How does ASIC use these complaint records and assessments to determine whether enforcement or compliance action is warranted?

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698. Was this process followed in the complaints made by Bankwest clients?
699. Where are these complaints records and assessments?

Answer:

690. ASIC did not undertake a 'review' of the Commonwealth Bank of Australia's takeover of BankWest as described in the question. We refer to our answer to BET 14 in this regard. We also note that ASIC's assessment of Mr O'Brien's report of misconduct, as well as others, did not identify any specific evidence of misconduct or impropriety by directors or employees of either the Commonwealth Bank of Australia or BankWest, or its agents, as part of the former's takeover of the latter.
691. We refer to our answer to BET 15.
692. We refer to our answer to BET 15.
693. We refer to our answer in BET 14.

We also note that ASIC conducted an assessment of Mr O'Brien's report of misconduct. Our assessment determined that there was insufficient evidence for ASIC to take regulatory action in relation to Mr O'Brien's claims.

ASIC's reply to Mr O'Brien dated 19 September 2013 advises on ASIC's decision to take no further action in relation to the issues that he had raised with us. Our reply did not refer to a 'review' by ASIC.

In the context of ASIC's processes, ASIC confines use of the word 'investigation' to an investigation established under section 13 of the *Australian Securities and Investments Commission Act 2001*. ASIC did not conduct an investigation under section 13 following the reports of misconduct we received about the takeover of BankWest referred to in question AET 29.

694. ASIC received reports of misconduct from people raising concerns about aspects of the Commonwealth Bank of Australia's takeover of BankWest. Mr Foran referred to these people in the 24 May 2013 email. As set out in our answer to BET 14 and 4 above, no investigation was established by ASIC in relation to the reported allegations.

In relation to the assessment of the various reports of misconduct lodged with ASIC regarding this matter, ASIC communicated our decision not to take further action, to all reporters at the time that the decisions were made, where possible.

ASIC responded to the person who had lodged a report of misconduct with us, our reference 56799/12 on 13 August 2013.

695. ASIC has an established process for recording reports of misconduct we receive.

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We keep records of reports of misconduct, as well as documents we receive in support of these reports, correspondence, and internal documents, in a variety of electronic databases and in hard copy files.

ASIC has issued Information Sheet 153 *How ASIC deals with reports of misconduct* to inform the public about our process on receipt of their report of misconduct. In addition, Information Sheet 151 *ASIC's approach to enforcement* provides the public with general information about the issues we take into account when selecting matters for further regulatory action.

Similarly, Chapter E of ASIC's main submission to the Senate Economics References Committee Inquiry into the performance of ASIC contains a general explanation of the process and methods for ASIC's assessment of reports of misconduct.

These public statements describe ASIC's assessment process. Broadly, as part of the assessment process, ASIC considers (among other things):

- the material provided to us by the person who is reporting the alleged misconduct to ASIC;
- previous reports of alleged misconduct received by ASIC;
- all publicly available information;
- information we may be able to obtain from other agencies;
- information from related third parties; and
- any previous information obtained by ASIC in any of our activities, including surveillances, enforcement actions and investigations.

When deciding whether regulatory action is appropriate, we will consider:

- the strategic significance of the matter;
- the benefits to the market or public of pursuing the misconduct;
- matter-specific issues, including what evidence is available and what outcomes could be obtained using that evidence; and
- whether there is an alternative course of action for dealing with the concern.

696. We refer to our response to Question 695.

697. We refer to our response to Question 695.

698. The processes outlined in our response to Question 6 were followed to assess the reports of misconduct we received from BankWest clients.

699. The records relating to the reports of misconduct and assessments are kept in ASIC's confidential databases, as well as in electronic and hard copy paper files, in accordance with recording keeping requirements under the *Archives Act 1983* and other legislative and policy obligations.