

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates

2014 - 2015

**Department/Agency: ASIC**

**Question: SBT 19-20**

**Topic: QFS150**

**Reference: written - 30 October 2014**

**Senator: Williams, John**

**Question:**

19. ASIC withdrew QFS150 on the 8th of August after it being in existence since 2004. In a statement, ASIC acknowledged the legal uncertainty, particularly in relation to an issue as important as to whether clients should receive the benefit of the retail client consumer protections, is undesirable and supports a review of the test to ensure that it is both clear and appropriate.
- a) What has ASIC done to get more clarity on this?
  - b) Has ASIC made any effort to get clearer legislation in place?
20. Activist Jonathon Moylan received a two year \$1,000 bond for distributing a fake press release on fake ANZ letterhead. The penalty could have been a maximum 10 years gaol or a fine up to \$765,000. Is ASIC disappointed that, after bringing the case against Mr. Moylan, he has escaped with no more than a slap on the wrist?

**Answer:**

19.

ASIC wrote to Treasury on 20 August 2014, attaching its media release of 8 August 2014 in relation to the withdrawal of QFS150. This letter noted the undesirability of the current legal uncertainty and reiterated ASIC's view that the only way to address this uncertainty is through law reform.

20.

ASIC is satisfied that it took swift and appropriate investigation and prosecution action against Mr Moylan.

Sentencing is a matter for the Court to determine, not ASIC. The Court sentenced Mr Moylan to 20 months imprisonment and ordered he be immediately released upon giving security by way of recognisance in the sum of \$1,000 upon the condition to be of good behaviour for 2 years. In addition, pursuant to section 206B of the Corporations Act, Mr Moylan was disqualified from managing a corporation for 5 years

At the sentencing hearing, the prosecutor referred the sentencing judge to a number of decisions concerning market misconduct offences. In all instances, sentences of imprisonment were imposed, although in some cases suspended in whole or in part. Personal profit was the dominating motive in those cases, and the lack of such a motive was said to be

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a distinguishing feature of Mr Moylan's case. When passing sentence, his Honour explained his decision to order Mr Moylan's immediate release on a recognisance, as follows:

*"I accept that you are now contrite for the damage you have done. I note your plea of guilty. You did not commit this offence for personal gain nor did you receive any. You did it for motives I accept were sincerely held by you even though your methods of achieving them were wrong. I do not consider that a sentence to be served in custody would serve any good purpose for you or the community."*

ASIC, in consultation with the CDPP, was satisfied that the sentencing judge did not make any errors of law and accordingly there was no reasonable prospect that a Crown appeal against the sentence would be successful.