

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 14 – 15 February 2007

Question: **act 7 (ASIC)**
Topic: **Pistachio growers (further to sbt 6)**
Hansard Page: **Written**

Senator SHERRY asked:

1. In ASIC answer to sbt 6 1a) ASIC stated *"In its earlier investigations, ASIC formed the view that the Peebinga Pistachio Plantation Scheme (PPP) was illegal. However, those investigations also revealed that the scheme was not originally set up by Mr and Mrs Fleming."*

Does this mean those who originally set up PPP set up an illegal scheme that led to the severe financial loss of the growers should be acted against?

2. Further in answer 1a) ASIC stated *"In December 2004, PPA proposed to ASIC that it would make a cash offer to all growers and then wind up the scheme. This proposal was accepted by ASIC on the basis that the cash offer was likely to exceed the amount growers would receive if PPP were wound up"*.

Did ASIC consult with growers before accepting this offer? If not in hindsight do you think you should of, so you could at least explain the dire circumstances they were in?

3. In answer 1b) ASIC states *"On 5 November 2005, ASIC received advice from a grower who stated he had accepted PPA's offer, but had not been paid"*.

What action did ASIC take after receiving this complaint? Would the failure of PPA to comply with the proposal agreed to between ASIC and PPA be a breach of the law and in turn require ASIC action against PPA?

4. In response to question 2 ASIC states *"ASIC has requested, and is awaiting receipt of, a supplementary report from the liquidator of PPA and will assess that report to determine what action, if any, is warranted"*.

What date did ASIC make this request to the liquidator of PPA and has ASIC set a date for the maximum time allowed to respond to this request, when does ASIC think they will receive the supplementary report?

5. If the supplementary report from the liquidator indicates that monies from the sale of Pistachio nuts was used to pay for the cash offer to a lucky few growers instead of the agreed funding from Elan Trading Corporation would this be considered by ASIC as a breach of the act and in turn require action against PPA.

Answer:

1. The PPP scheme was an unregistered prescribed interest scheme, which commenced operation in 1986. There was insufficient evidence available to determine whether or not it needed to be registered. Therefore, the operation of the scheme may not have been illegal at the time it was originally set up.

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2. ASIC neither accepted, nor approved, the cash offer, as it was not a party to it.

The proposal to make a cash offer to all growers and then wind up the scheme was the preferred alternative to ASIC winding up the scheme as it appeared to offer the growers the potential to achieve a better outcome.

3. In response to the advice ASIC received on 5 November 2005, ASIC commenced enquiries.

On 11 November 2005, a receiver and manager was appointed.

On 17 November 2005, a voluntary administrator (who later became the liquidator) was appointed as a result of which ASIC suggested the grower contact the external administrators.

The failure of PPA to comply with the offer accepted by the growers would not constitute a breach of the *Corporations Act 2001 (Cth)*.

4. ASIC received a supplementary report under section 533 of the Corporations Act (the Act) from the liquidator on 28 February 2007, which it is currently assessing. The Act places a duty on the administrator to lodge a supplementary report specifying any other matter that is in their opinion, desirable to bring to ASIC's attention. However, the content of these reports are confidential and are not made available on ASIC's public database.
5. ASIC will be in a position to determine what action, if any, is warranted after its assessment of the supplementary report is concluded.