

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates 14 – 15 February 2007

**Question:** aet 75 (ASIC)

**Topic:** Office of Workplace Services

**Hansard Page:** Written

**Senator MURRAY asked:**

The Assetless Administration Fund appear to have been quite successful in cracking down on systematic misbehaviour by company officers who have deliberately avoided responsibilities to creditors, which includes employees who have missed out on entitlements.

ASIC puts out a list of banned directors – do you also inform the Office of Workplace Services that directors have been banned because of failure to pay entitlements or other workplace obligations to employees?

**Answer:**

ASIC's powers to include persons in the Registers of Banned and Disqualified Persons (the register) are set out in the Act, which are to:

keep a register of persons that have been disqualified from managing corporations under sections 206C, 206D, 206E or 206F or a State or Territory equivalent to one of these provisions (s1274AA of the Act); and  
make available the register available to the public and the information relating to orders and notices registered under s1274AA of the Act.

The register is available to the public through ASIC's website and provides basic information regarding the identity of the director banned, address and period of banning. Further, ASIC generally issues a media release regarding directors that have been banned under one of the above provisions.

Disqualification from managing corporations under the Act that result in directors being on the register are where:

ASIC may apply to the Court for a declaration of a contravention of a civil penalty provision under the Act (section 1317E of the Act) and the Court is satisfied that the disqualification is justified (section 206C of the Act)

ASIC may apply to the Court where a person in the last 7 years has been an officer of 2 or more corporations when they have failed and the Court is satisfied that the person was wholly or partly responsible for the failure and the Court is satisfied that the disqualification is justified (section 206D of the Act)

ASIC may apply to the Court where the person has been found to have repeated contraventions of the Act and the Court is satisfied the disqualification is justified (section 206E of the Act)

ASIC may disqualify a person if within 7 years the person has been an officer of at least 2 corporations and while an officer or within 12 months after ceasing each of the corporations was wound up and a liquidator lodged a report under section 533 of the Act about the

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corporation's inability to pay its debts and ASIC is satisfied that the disqualification is justified (section 206F of the Act).

Under section 533 of the Act where it appears to a liquidator that:

there has been a breach of a Commonwealth or a State or Territory law,  
a person has misapplied or retained funds or property of the company or is guilty of negligence, breach of duty or breach of trust, or

the company can't pay unsecured creditors more than 50 cents in the dollar,  
a report is submitted to ASIC on a confidential basis setting out details of any breaches and evidence in support that would enable ASIC to take action under one of the above provisions to have any responsible director banned. The liquidator may, as part of the investigation in compiling the section 533 report, liaise with the Office of Workplace Relations in circumstances where there has been a failure to pay workplace entitlements.

#### **QON**

ASIC has a Memorandum of Understanding with the Tax Office and other Government departments – do you have one with the Office of Workplace Services so that it can follow up matters properly, by prosecuting employers for non-payment of entitlements?

#### **Answer:**

ASIC's register of disqualified persons is not a complete record of all persons who are disqualified persons, because ASIC does not, for example, receive notice of fraud convictions made by the Courts in every Australian jurisdiction which record such convictions. ASIC's database is a record of only those disqualifications which are required to be registered by section 1274AA of the Corporations Act, namely those persons who have been disqualified from managing corporations under ss206C to 206F of the Corporations Act.

The register of disqualified persons is accessible from the ASIC public website and anyone can search that register freely.

A Memorandum of Understanding (MoU) can facilitate the exchange of information, but this is not a necessity. ASIC does not have a MoU with the office of Workplace Services and other non-MoU agencies. Under section 127(4) of the ASIC Act, ASIC is able to disclose confidential information to an agency if it will enable that agency to perform its functions or powers.