

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 14 – 15 February 2007

Question: aet 76 (ASIC)

Topic: Correspondence of 21 December 2006

Hansard Page: Written

Senator MURRAY asked:

1) In correspondence from ASIC's executive Malcolm Rodgers dated 21 December 2006, he advised me that ASIC does not record whether a registered company is for profit or not. The AASB is examining accounting standards that will be specific to the NFP sector.

Is ASIC looking at reviewing its data capture fields to recognise the different nature of such entities?

2) In that same letter, I received a response regarding enforcement against companies which fail to comply with section 319. I was advised that this is a 3 phase process. I was advised that 'This process has been completed for all 2004 non-complying companies'.

If my understanding is correct, once non compliance has been established a letter is sent, to which the party must respond in 28 days, if nothing happens they are given a 14 day Notice and if they do not respond to that then court proceedings are initiated to obtain an order for them to comply. Given the initial timeframe, why does it take so long to complete the process for all non-complying companies (ie I'm being told in Dec 2006 that it has been completed for 2004 companies) – Is that due to hold-ups in the Courts, or is it because there are insufficient staff or resources in ASIC to process these matters more efficiently?

Answer:

- 1) No. Under the Extract of Particulars process, ASIC has no general power to require companies to tell it whether they are for profit or not.
- 2) There are several reasons why the process takes the time it does. The main reasons are that:
 - ASIC attempts to facilitate compliance by allowing a reasonable time for a company to lodge outstanding financial reports (from the date of notification of default) before escalating a matter to court proceedings; and
 - Court rules and procedures in some states; for example, the Queensland court at the relevant time would only allow us to file 5 matters per hearing date, with a maximum of 2 hearings per week (we have now negotiated a process improvement with the present Registrar to file up to 20 matters per hearing);
 - it takes at least 4 weeks to advise us of a hearing date from the date we file our applications (we are not able to serve our application on the company until the court advises us of a hearing date).