

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates, 31 May to 2 June 2005

**Question: Bud 12**

**Topic: ASIC – General**

**Hansard Page: Written**

Senator Lundy asked:

1. What is the nature of your consultation, discussion and information sharing with the state or territory fair trading and consumer affairs bodies?
2. Do you have formal measures in place to facilitate this?
3. Does ASIC deal with all the issues that come through the ASIC client contact centre?
4. Where are consumers directed if ASIC does not deal with their grievance?
5. How do you decide which issues ASIC will deal with?
6. How many inquiries/complaints does ASIC receive and what proportion of grievances are resolved under the particular actions you choose to take on?
7. How are consumers who do have a valid grievance that it is not significantly widespread for ASIC to take action dealt with?
8. What is the nature of ASIC's relationship with consumer affairs committees such as MCCA and SCOCA?

Answer:

1. Extensive consultation, discussion and information sharing occurs between ASIC and state and territory fair trading and consumer affairs agencies at Commissioner, Executive Director, Regional Commissioner and officer level.

In relation to individual matters requiring ongoing consultation and coordination, ASIC and state agencies always provide each other with an agency contact point to facilitate efficient liaison.

Further information relevant to this question is provided in our responses to Q2. and Q.8 below.

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2. ASIC has Memoranda of Understanding with all state and territory fair trading/consumer affairs agencies. These provide for inter-agency cooperation, coordination and information-sharing.

ASIC is represented on the Fair Trading Operations Advisory Committee. FTOAC is a standing committee of officers responsible for compliance and/or enforcement of fair trading issues from Commonwealth, State, Territory and New Zealand consumer affairs and related agencies. This committee has monthly telephone meetings and three face-to-face meetings per year to facilitate consultation and information sharing on compliance and enforcement issues. ASIC is currently represented on this Committee by Mr. Greg Kirk, Director of Campaigns and Compliance, Consumer Protection.

Apart from FTOAC, ASIC is involved with a number of other committees and processes under the Ministerial Council on Consumer Affairs umbrella. These are discussed in response to Q. 8 below.

In addition, the Consumer Protection and International Directorate within ASIC has regular liaison meetings with the NSW Office of Fair Trading, the Queensland Office of Fair Trading, the West Australian Department of Consumer and Employment Protection and Consumer Affairs Victoria, as well as considerable informal contact at a range of levels with these and other state and territory agencies.

In the smaller jurisdictions in particular, ASIC's Regional Commissioners play a key role in facilitating communication and information exchange with state and territory agencies.

3. ASIC deals with all matters that come into the Client Contact Centre that fall within its jurisdiction. When a call comes into the Client Contact Centre and the issue falls outside ASIC's jurisdiction, the caller is referred to the appropriate organisation. The Client Contact Centre has a 'Contacts List' and people are provided with the appropriate telephone number and website address.
4. ASIC attempts to provide assistance to every caller to our Client Contact Centre. ASIC's first priority is to attempt to resolve the caller's query by the provision of further information. If a caller raises firstly, a complaint, or secondly, an issue that requires further analysis to assist, the caller's information is registered and referred by the Client Contact Centre to an officer in our National Assessment & Action team in the caller's relevant State or Territory. Callers may be requested to provide written details of their complaint, including supporting documentation, so that their complaint is able to be actioned promptly.

Callers whose grievance relates to a matter outside ASIC's jurisdiction are directed to the appropriate agency, for example, the Australian Taxation

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Office or the relevant State based Consumer Affairs agency. Some matters (for example, internal company disputes), while falling within ASIC's jurisdiction, do not raise issues ASIC can act on in that the legislation provides a remedy to the member/director but does not create criminal or civil liability. In such cases, ASIC will advise the consumer to seek independent legal advice.

The consumer may also be directed to the appropriate dispute resolution procedure to deal with their grievance. This involves advising the consumer of the internal dispute process and the external dispute resolution process relevant to their particular grievance (eg: Banking & Finance Services Ombudsman, Finance Industry Complaints Service, Credit Ombudsman Service Limited)

5. The first consideration is to determine whether the issue is within ASIC's jurisdiction. To provide context, approximately 5% of public complaints received in the 2004/2005 financial year were outside ASIC's jurisdiction (decreased from 7% in the previous financial year). Once jurisdiction has been confirmed, the matter is analysed to determine if the conduct complained of actually breaches the law.

If so, ASIC will then consider whether it is appropriate to pursue a compliance outcome. If not, ASIC will consider whether to take enforcement action, or if there is insufficient evidence, conduct a surveillance to monitor past and present conduct of the entity in question. In determining which matters to action, consideration is given to a range of factors including the age of the conduct, the strength and availability of the evidence and the likely regulatory impact of taking action.

6. The information in response to this question is available in ASIC's 2004/05 Annual Report.

- A ASIC encouraged the public to report suspected corporate and financial services misconduct, and we received 10,752 complaints, up 8% from the previous year. Despite this increase, we resolved 57% of matters, compared with 44% last year, primarily through helping people with the information they needed or by getting companies or company officers to comply. In addition, an increased number of public reports were referred for investigation or surveillance, up 1% to a total of 6%.

We sent 1222 warning letters, achieving compliance in 81% of those cases. Another 478 company officers were prosecuted for 905 offences, most commonly to thwart creditors. Penalties included 1 jail term, 30 good behaviour bonds, 7 disqualifications from company management and total fines and costs of \$989,000.

7. As noted above, ASIC takes varied forms of action in relation to complaints in an attempt to resolve the issue raised by the consumer. If no action can be taken by ASIC, consumers are personally advised, by telephone and/or by correspondence.

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In all cases, analysts will endeavour to discuss the matter with the consumer so that they are aware and understand the basis for ASIC's decision. Unless it is apparent that they have already done so, consumers will also be advised to seek independent legal advice, and ASIC will provide consumers with the details of community based legal services, where appropriate.

If a consumer is dissatisfied with the outcome of their complaint, the consumer is advised that they may have the matter reviewed. A different, usually more senior, analyst to the person who initially considered the matter carries out that review.

As is the case with original complaint, the review complaint is subject to a strict internal approval process to ensure quality and consistency in our decision making process. If the consumer remains dissatisfied after the review, we advise the consumer that they are able to refer the matter to the Commonwealth Ombudsman.

8. ASIC participate actively in the committees and other processes of the Ministerial Council on Consumer Affairs. ASIC has been a member of the Standing Committee of Officials of Consumer Affairs since June 2002, and is currently represented by Mr. Greg Tanzer, Executive Director Consumer Protection & International. As noted in response to Q.2 above, ASIC is also represented on the Fair Trading Operations Advisory Committee.

In addition, ASIC is represented on a number of ad hoc SCOCA and MCCA working parties including currently working parties dealing with finance and mortgage brokers, property investment advice, pecuniary penalties, national indigenous consumer strategy, and financial literacy.