

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 29, 30 & 31 May 2007

Question: bet 52 (ASIC)

Topic: Annual Report - Criminal & Civil Prosecutions / Staffing Figures

Hansard Page: E80/81

Senator PARRY asked:

I turn to the six-year summary on page 51 of the annual report. There is a discrepancy. It may have been answered in previous estimates, but I am still curious to know this. Some 71 per cent of litigation in 2000-01 was successful, and the rest has been consistent; I think it works out to be 93 per cent—it is 94 per cent, 93 per cent and 92 per cent. Is there a particular reason? I notice the staffing is pretty well in line, if you look at increments, and funding is pretty well in line with increments over that time. Is there a particular reason why successful litigation was down a reasonable percentage difference, or is there a reason why it has been so high in the last few years?

Mr Cooper—It is useful when you split those figures out, because that figure is a blended one. It blends criminal prosecutions and civil prosecutions. We can get you the figures but if you break them apart you will see that the civil rate, of which there are more cases, is right up there; it is in the high nineties. I think you will find that the criminal rate is more akin to the 2001 or 2000 figure that you gave us. It is more in line with that. It is 70 per cent or so. Breaking them apart gives you a better feel for it.

Senator PARRY—There is a footnote which reads ‘2000-2001 may understate success rate’. I thought that might lead to an explanation as to why that is understated.

Mr D’Aloisio—I do not know. We can have a look at it for you. We will take it on notice.

Senator PARRY—If there is anything worth reporting back, if you would provide that on notice that would be great.

Mr D’Aloisio—We will take it on notice.

Senator PARRY—Likewise, on the six-year summary, in 2005-06, the year reported on, the staff average full-time equivalent, FTE, was 1,471, a decrease of 99 from the previous financial year. I have read through the staff and the personnel aspects, and there is no explanation as to why they were 99 down. That is a six per cent reduction. It is acknowledged that there was a six per cent reduction. Coincidentally, there is a six per cent reduction in workplace accidents as well, but that obviously is not related. Is there a reason why there was a 99 deficit this year compared with last year?

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Mr Cooper—I think you will find that those figures have increased. We have received substantially more funding in the interim period. We can get you the detail on this. It may well have been that we were managing staff levels against our working capital. Certainly the current state of affairs would see—just guessing roughly—another 100 on top of the 1,471 figure that you have given us and, correspondingly, substantially increased funding in this financial year as well. We can get you the figures.

Mr D'Aloisio—We will take that on notice.

Answer:

Annual Report – Criminal and Civil Prosecutions

The ASIC Annual Report 2005–06 states (at page 51, in part):

	2005–06	2004–05	2003–04	2002–03	2001–02	2000–01
% successful litigation*	94%	94%	93%	94%	92%	71%
Litigation concluded	386	193	220	222	205	150

* 2000–01 may understate success rate.

The ASIC Annual Report 2002–03 states (at page 66, in part):

	2002–03	2001–02	2000–01	1999–00	1998–99	1997–98
% successful litigation*	94%	92%	71%	75%	89%	90%
Litigation concluded	222	205	150	173	154	199

* 1999–00 and 1998–99 may understate success rate.

The percentages presented merge the success rates across all criminal, civil and civil penalty matters undertaken.

As can be seen, ASIC's percentage of successful litigation appears to have reduced significantly for the period 1999 to 2001. While it is difficult to say precisely what the reasons for the reductions are in this period, it is noted in the relevant annual reports that the percentages may understate success rates in 1998–99, 1999–00 and 2000–01.

However, one reason ASIC has consistently received litigation success rates in excess of 90% since 2000–2001 may be because of the increasing number of civil injunction

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matters taken (e.g. freezing orders; restraining orders; illegal scheme cases) in which ASIC has obtained a high success rate. ASIC is generally more successful on these types of cases than in respect of criminal prosecutions because of the different standard of proof.

Staffing Figures

In approving ASIC's budget for 2005-06, the Commission implemented a number of initiatives to realise efficiencies and ensure that ASIC did not incur an operating deficit for the financial year.

In addition, the Commission also realised efficiencies through the creation of the Regulation and Compliance Directorates that flowed through to 2005-06 resulting in a reduction in staff numbers

As a consequence of these initiatives there was a reduction of 99 in FTEs (averaged over the 2005-06 financial year) when compared against the yearly average for 2004-05. Page 94 of ASIC's 2005-06 Annual Report records at Note 21 the following average FTE numbers:

2004-05	1,570
2005-06	1,471

In 2006-07 ASIC's FTEs was 1610.