

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates 1 - 2 November 2006

**Question:** sbt 2 (ASIC)  
**Topic:** Conduct of Insurance Agencies  
**Hansard Page:** Written

**Senator SHERRY asked:**

1. When will CAMAC present the results of its review into directors' duties and Does ASIC have the legislative and administrative responsibility for the Insurance Contracts Act 1984, its enforcement of breaches and the overseeing of the actions of insurance companies and their interaction with policy holders at all times?
2. How many complaints has ASIC received in relation to insurance companies over the last twelve months and of these how many of these complaints have been upheld, how many and what type of actions have been brought by ASIC against insurance companies?
3. How many complaints have FICS received in relation to insurance companies over the last twelve months and of these how many of these complaints have been upheld, how many and what type of actions have been brought by FICS against insurance companies?
4. I would like to draw your attention to one case in particular, a Mr Philip O'Leary (ASIC reference number 29741/06) who was the only income earner of the family and fell seriously ill in January 1999 and was unable to continue working.

In March 1999 is insurance company commenced income payments to Mr O'Leary but the insurer ceased these payments on 20<sup>th</sup> November 2003.

The reason given for termination was reportedly two non-contractual, non-medical reasons which were never mentioned previously.

Mr O'Leary wrote to ASIC on the 3 May 2006 seeking assistance and ASIC responded to this letter on the 01<sup>st</sup> June 2006 stating after careful consideration ASIC has decided that they will not take any further action into the issues raised.

What were the reasons for ASIC's determination and under what circumstances would ASIC move to protect someone in Mr O'Leary's situation?

5. In the Mr O'Leary case, during the FICS process, the Insurer admitted in writing that its reasons for termination are not in the Insured's contract. If this

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is the case would ASIC consider the insurance company to be complying with its "duty of utmost good faith"?

6. Mr O'Leary received an email from ASIC on a Friday at 2:48pm saying ASIC would investigate this matter further and then on the following Tuesday, less than 8 working hours later Mr O'Leary received a letter from ASIC stating they would take no further action, stating ASIC will act further if more "cogent evidence by the insurer of the laws ASIC administers" What cogent evidence would be required for ASIC to act further?

#### Answer:

1. The question of when CAMAC will present the results of its review into directors' duties should be directed to CAMAC.

ASIC has the general administration of the *Insurance Contracts Act 1984* and has power to, among other things, do all things necessary or convenient to be done in connection with its administration. In certain circumstances, ASIC is able to take action against an insurer on behalf of an insured or insureds where, among other things, the requirements of the *Insurance Contracts Act 1984* have been breached.

2. ASIC received 47 complaints involving 34 insurance companies over the period 1 July 2005 to 30 June 2006.

Of these complaints, 34% were resolved or the complainant's enquiry was answered; ASIC took no action in respect of 53% (either due to lack of evidence, the matter falling outside ASIC's jurisdiction or no offences being identified); and 13% were referred for investigation or surveillance.

3. The FICS Annual Review 2005 indicates that, for the period 1 January 2005 to 31 December 2005, there were 310 open and 686 finalised life insurance complaints.

The general nature of these complaints and their outcomes are set out in the FICS Annual Review 2005.

4. In assessing complaints, ASIC considers its regulatory responsibilities. To form a view of what behaviour can be characterised as systemic, it considers individual facts, the regularity and continuity of any conduct complained of and the availability and suitability of the remedies available to the complainant.

Mr O'Leary had already instituted proceedings in the Supreme Court of Victoria. ASIC did not consider that Mr O'Leary's circumstances warranted ASIC to take further action.

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5. Whether the insurer has acted in breach of the 'duty of utmost good faith' provisions is a matter the Victorian Supreme Court can consider.
6. ASIC does not predetermine what evidence it will consider. ASIC weighs every complaint against what legal action it may take, whether the evidence is likely to be sufficient, which complaints are most urgent and serious and whether there will be a change in behaviour if success is achieved.