Parliamentary Joint Committee on Corporations and Financial Services

Statutory Oversight of the Australian Securities and Investments Commission

May 2012

Commonwealth of Australia 2012

ISBN 978-1-74229-622-7

Printed by the Senate Printing Unit, Parliament House, Canberra

Members of the Committee

Ms Deborah O'Neill MP, Chair	NSW	ALP
Senator Sue Boyce, Deputy Chair	QLD	LP
Senator Mathias Cormann	WA	LP
Senator the Hon Nick Sherry	TAS	ALP
Senator Matt Thistlethwaite	NSW	ALP
Mr Paul Fletcher MP	NSW	LP
The Hon Alan Griffin MP	VIC	ALP
The Hon Tony Smith MP	VIC	LP
Ms Laura Smyth MP	VIC	ALP

SECRETARIAT

Dr Richard Grant, Acting Secretary

Ms Erin East, Principal Research Officer

Ms Katie Bird, Research Officer

Ms Ruth Edwards, Administrative Officer

Suite SG.64
Parliament House
Canberra ACT 2600

T: 61 2 6277 3583
F: 61 2 6277 5719
E: corporations.joint@aph.gov.au
W: www.aph.gov.au/senate/committee/corporations_ctte

Duties of the Committee

Section 243 of the *Australian Securities and Investments Commission Act 2001* sets out the Parliamentary Committee's duties as follows:

(a) to inquire into, and report to both Houses on:

(i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or

(ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and

(b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and

(c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

Table of Contents

Members of the Committee ..... **iii**

Duties of the Committee ..... **iv**

Abbreviations ..... **vii**

Chapter 1 ..... **1**

Statutory oversight **1**

Mr Michael Dwyer 2

Gathering evidence 2

Chapter 2 ..... **5**

Takeovers Panel **5**

Processes of the Takeovers Panel 5

Diagram 2.1 6

Consistency of Takeovers Panel decisions 6

Transparency of Panel decisions 7

Committee view 8

Chapter 3 ..... **9**

Australian Securities Investments Commission **9**

ASIC's work towards its strategic framework priorities 9

Enforcement and litigation 10

Standards for Financial Advisors 12

The Australian Charities Not-for-profits Commission 15

Appendix 1 ..... **17**

Public Hearings **17**

Appendix 2 19

Answers to questions on notice to ASIC 19

Abbreviations

ACNC	Australian Charities Not-for-profits Commission
AFSL	Australian financial services licence
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
ASX	Australian Securities Exchange
AUSCO	Australian Cultural Orientation
CALD	Culturally and linguistically diverse
CALDB	Companies, Auditors and Liquidators Disciplinary Board
CDO	Collateralized debt obligation
CFD	Contract for difference
FOFA	Future of Financial Advice
FMA Agency	An agency established under the *Financial Management and Accountability Act 1997* (FMA Act)
FMR	Financial Market Regulator
GTA	Group Training Australia
IBSA	Innovation and Business Skills Australia
IDPS	Investor directed portfolio service
IOSCO	International Organization of Securities Commissions
MIS	Managed investment scheme
SMSF	Self managed superannuation fund
PISA	Programme for International Student Assessment
Trio inquiry	Inquiry into the collapse of Trio capital and any other related matters, established June, 2011

Chapter 1

Statutory oversight

1.1 The Parliamentary Joint Committee on Corporations and Financial Services (the committee) was established by the *Australian Securities and Investments Commission Act 2001* (the ASIC Act). Under Section 243 of the Act, it is to inquire into the performance of the Australian Securities and Investments Commission (ASIC) and to evaluate the operations of the Corporations Act and any legislation impinging on it.

1.2 This report is presented in response to the first of these responsibilities. In 2011 the committee raised the level of its active oversight of ASIC through holding four hearings annually. The hearings require ASIC officers to give evidence about the commission's execution of its duties. The committee also decided to expand its understanding through the use of independent expert witnesses to complement information coming from ASIC. The intent was that these witnesses could elucidate the context in which ASIC operates and offer different perspectives on the issues with which ASIC deals.

1.3 ASIC is the regulator of Australia's corporate sector, markets and financial services and is responsible for monitoring the integrity of Australia's financial system. This includes the regulation of corporations, financial advisors and consumer credit providers, and supervision of trading on Australia's licensed equity, derivatives and futures markets. The commission may also advise the minister on changes required to address concerns with the operation of the corporations legislation or the financial products or financial services industry, or to improve the efficiency of the financial markets.

1.4 The committee's key interest is whether ASIC is fulfilling its statutory responsibilities as the corporate, markets and financial services regulator. Section 1 of the ASIC Act directs ASIC to:

- maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development o the economy;
- promote the confident and informed participation of investors and consumers in the financial system;
- administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements;
- receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it;
- ensure that information is available as soon as practicable for access by the public; and

- take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer function and powers on it.

1.5 The committee's major concern is that investors have confidence in Australian financial markets so as to attract robust investment and creative economic activity from both large corporate players and the multitude of small businesses and private investors that underpin the sector.

1.6 For this inquiry, in addition to taking evidence from ASIC officers, the committee invited the Takeovers Panel to give evidence. Section 243 of the ASIC Act authorises the committee to oversee the activities of the Takeovers Panel in the same manner that the committee is authorised to oversee ASIC. This was the Takeovers Panel's first appearance at an ASIC oversight hearing. The committee thanks Panel members for their contribution.

1.7 The Takeovers Panel was established in 1991 by the ASIC Act and re-established in 2001 under Part 10 of the ASIC Act. The Panel is responsible for resolving disputes about a takeover bid until the bid period has ended.[1] The Panel's main functions are:

- making declarations of unacceptable circumstances under section 657A of the Corporations Act, and orders to remedy those circumstances; and
- reviewing decisions of ASIC to:
  - exempt a person from the requirements in the Corporations Act regarding takeover bids, or to modify the requirements; or
  - exempt a person from, or modify the operations of, the requirements in the Corporations Act regarding the provision of information about the ownership of listed companies or managed investment scheme.[2]

Mr Michael Dwyer

1.8 It was with great sadness that the committee heard of the passing of Mr Michael Dwyer, a former ASIC Commissioner, on 2 March 2012. Mr Dwyer's expertise in insolvency matters in particular was of significant benefit for both this committee and the Economics Legislation and References Committees. The committee extends its sympathies to Mr Dwyer's family and his colleagues at ASIC.

Gathering evidence

This report records evidence given by representatives of the Takeovers Panel and ASIC at a public hearing on 21 March 2012 in Canberra. All witnesses are listed in

---

1 Takeovers Panel website 'About the Panel': http://www.takeovers.gov.au/content/DisplayDoc.aspx?doc=about/about_the_panel.htm (accessed 16 April 2012)

2 Takeovers Panel, *Annual report 2010-11*, p. 9

Appendix 1. Copies of the Hansard transcripts from the hearings have been tabled for the information of the Parliament, and are available on the committee's website, www.aph.gov.au/Senate/committee/corporations_ctte/asic/index.htm

1.9 The committee placed a number of questions on notice at the public hearing. ASIC provided answers on 11 May 2012.

Chapter 2

Takeovers Panel

2.1 As part of the committee's oversight responsibilities, the committee took evidence for the first time from the Takeovers Panel. Established in 1991 under the *Australian Securities Commission Act 1989*, the Takeovers Panel is responsible for addressing any issues that arise during a takeover bid. The panel was revitalised in 2001 under section 10 of the ASIC Act. The revitalisation process opened up applications to the panel from any aggrieved party including bidders, target companies and investors.

2.2 The Takeovers Panel is comprised of 52 members drawn from the professionals within the market, including lawyers, investment bankers and directors. Each matter is presided over by a sitting panel of three members.

2.3 In its first examination of the Takeovers Panel, the committee canvassed three main areas:

- the processes and decision-making powers of the Takeovers Panel;
- the consistency between decisions made by different panels; and
- the transparency of the decision-making process.

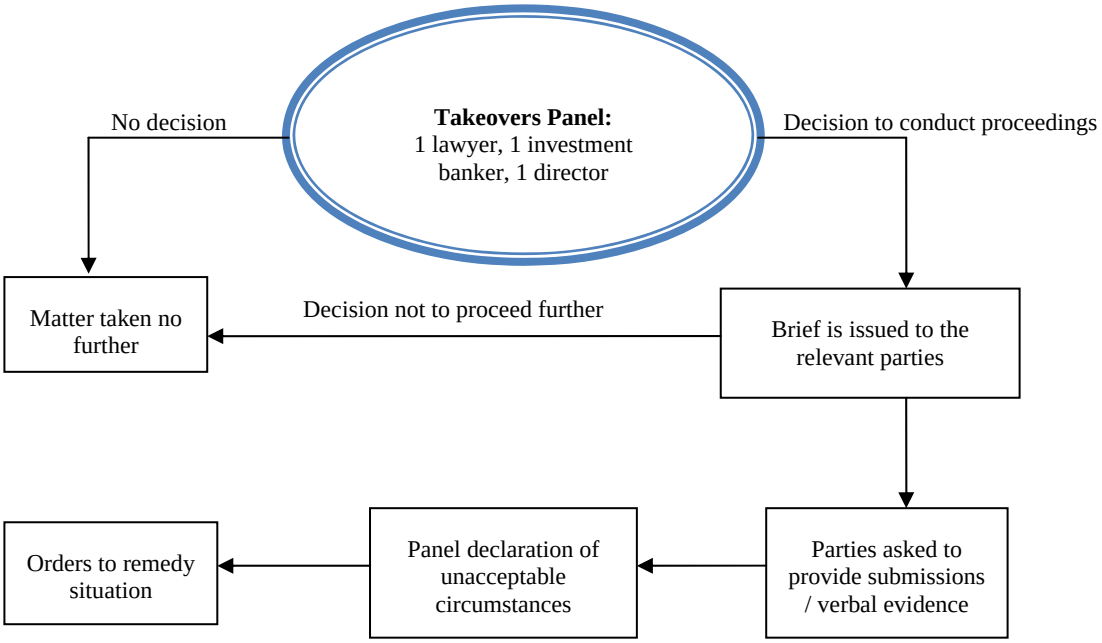
Processes of the Takeovers Panel

2.4 The committee examined the Takeovers Panel's processes and decision making procedures. The Director of the Panel, Mr Allan Bulman, explained:

> For the majority of our matters, the way they work is that once an application is made the panel is appointed by the President, being Kathy. It is usually three panel members: one lawyer, one investment banker and another member, usually a director. The first task of those three members is to decide whether or not to conduct proceedings, which is to consider the matter further. If they decide not to conduct proceedings then that is the end of the matter. If they decide to conduct proceedings they will normally issue a brief which gives the parties an opportunity over a couple of day period to provide written submissions and rebuttals. If there are any issues that they want to raise in relation to procedural fairness, they can raise them at that point. Then, depending on whether there needs to be further inquiries, the panel might ask further questions. If the panel decides that something needs to be done, that is a declaration needs to be made and potentially orders, there is a further process where the parties are asked to provide submissions on that issue as well. Occasionally, not so much in

recent years but occasionally, the panel has had conferences where it is a hearing where people are asked questions face-to-face or by telephone.[1]

Diagram 2.1



2.5 Under the Corporations Act, the Takeovers Panel is provided with the power when hearing matters to declare circumstances unacceptable and make orders. Mr Bulman described the Panel's powers in the following terms:

> The way two High Court judges referred to it in the Alinta decision was that a declaration of unacceptable circumstances is a declaration that something needs to be done. The orders are the things that need to be done to remedy the situation. The panel does not have a role of punishing behaviour. Its role is remedial. If there is something that needs to happen, the orders correct that. [2]

Consistency of Takeovers Panel decisions

2.6 One of the key issues examined by the committee was the level of consistency between the decisions of different panels on similar matters. The President of the Takeovers Panel, Ms Kathleen Farrell, explained that the Panel attempts to ensure consistency between decisions through a combination of guidance notes and drawing on previous panel decisions:

> A prior decision is guidance to another panel. A guidance note is guidance to another panel. We try to promote consistency that way. Having said that, every proposition can be generalised but needs to be tested against the market as it currently stands and the facts of the particular matter.

1 Mr Allan Bulman, Director, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 2.

2 Mr Allan Bulman, Director, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 2.

> Sometimes that can give rise to an outcome that might surprise some people, but generally we strive to be consistent because there is a value to that. We have to weigh the value of consistency—as a guiding principle or a straitjacket—against the movement in the market and what the market needs to be efficient, competitive and informed, which ultimately has to be our highest guidance.[3]

2.7 Mr Bulman told the committee that the growing number of matters dealt with by the Panel allows panel members to draw on previous decisions to produce consistency between decisions:

> Given that we have dealt with 372 matters, some commentators have observed that the panel is developing its own body of jurisprudence. There is now a body of decisions that the panel can refer to, and the executive assists sitting panels by explaining how previous decisions were come to. Most of the solicitors are very, very sophisticated and they will bring up previous matters. At the same time, to assist transparency in the market generally, the panel is currently making an index of all its decisions so that sitting panels, the executive and outside parties can very readily see what previous decisions the panel has made on a particular point. So there is a number of things over time that have assisted in ensuring consistency. At the same time we have made a lot of effort to ensure that our reasons are as readable and as understandable to market participants as possible. I would submit that that would be one of the most useful ways in which we can ensure consistency.[4]

Transparency of Panel decisions

2.8 The committee questioned the Takeovers Panel on the level of transparency in the panel decision-making process. The Panel explained that usually, matters are treated as private and only the parties involved are privy to specific details until a final decision has been made.[5]

2.9 Ms Farrell explained that during a matter, the Panel will usually prohibit parties discussing the matter in the media under their media-canvassing rule:

> So we do a press release when a matter starts. We have a policy that prohibits the parties canvassing in the media while the application is being heard. That is important in stopping the market being misinformed by the toings and froings of public argument. It also has the advantage of keeping some of the heat out of it, because they are always emotional things. And it allows for quick decision making. So it is a very important policy to us. So

3 Ms Kathleen Farrell, President, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 8.

4 Mr Allan Bulman, Director, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 9.

5 Mr Allan Bulman, Director, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 4.

> the next time the market generally finds out anything about the application is when we put out the press release saying what the decision was.[6]

2.10 The Panel informed the committee that the media-canvassing rule was regularly reviewed and assessed on a public interest basis:

> ...on balance, we consider that there is a better public interest to be served by that media-canvassing policy existing, until the point where our reasons are published. Then everyone can see why we did what we did and what we thought. We have a statutory obligation to give reasons, so we are very assiduous to try and make sure that they are as transparent as they can be...
>
> ...So we seek to be transparent when an application comes in by putting out a media release about the general nature of the application telling the public about the decision as soon as it is made and then giving readable reasons as soon as we can after that. Where we are dealing with an issue that needs a little more filling out, that is followed by a guidance note. We hope that that satisfies transparency around how we are thinking about things.[7]

2.11 In terms of the use of confidential documents by parties within a matter, as a general rule the Takeovers Panel prefers not to use confidential information to ensure procedural fairness for both parties:

> ...There are various ways we can deal with that issue. The panel members might see only a redacted version. In extreme circumstances, we have had some cases where the lawyers of the parties consent for some reason, so they effectively waive their rights. But that is very rare and a very difficult issue. Usually we say: 'No, sorry, what's put before the panel members all the parties need to see. If you want to redact something then redact it.'[8]

Committee view

2.12 The committee appreciates the importance of the Takeovers Panel's work and the imperative of ensuring that its decision-making processes are clear, consistent and transparent. At this time, based on the evidence received, the committee is satisfied that the Panel has the right systems in place to ensure that, as far as possible, these objectives are being achieved. It is important that Panel members continue to develop their expertise by working on a wide range of matters and regularly reviewing the effectiveness of their systems and processes. This will not only enhance Panel members' competence, but also promote greater consistency between decisions.

---

6 Ms Kathleen Farrell, President, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 6.

7 Ms Kathleen Farrell, President, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 6.

8 Mr Allan Bulman, Director, Takeovers Panel, *Committee Hansard*, 21 March 2012, p. 4.

Chapter 3

Australian Securities Investments Commission

3.1 At the committee's hearing on 21 March 2012, ASIC's evidence covered four broad areas:

- its achievements against the priority areas in ASIC's strategic framework;
- its recent initiatives in the area of enforcement and litigation;
- standards for financial advisors under the Future of Financial Advice (FOFA) legislation; and
- ASIC's role in the not-for-profit sector.

3.2 The committee also canvassed ASIC's compliance with a Senate Order in relation to organisation files following media reports claiming that ASIC had not satisfied requirements under the Order and was in contempt of the Senate. Members of the committee indicated they would explore this issue further through the Budget Estimates process in May this year.[1]

ASIC's work towards its strategic framework priorities

3.3 Mr Greg Medcraft, Chairman of ASIC, outlined the Commission's strategic framework priorities:

> Basically, our focus is on confident, informed investors and financial consumers, fair and efficient financial markets and an efficient registry and licensing system. We really have three subfocuses in the area of confident investors and financial consumers: (1) is education, (2) is gatekeepers and (3) is consumer behaviour.[2]

3.4 In relation to 'confident and informed investors and financial consumers', the committee heard that:

(a) following the committee's last oversight hearing, there had been a focus on education through various mediums including social media such as Youtube, Facebook and Twitter, ASIC's MoneySmart website and application and the ASIC website;

(b) a new financial literacy kit had been launched aimed at new migrants who come to Australia on humanitarian grounds. The kit provides 'multilingual

---

1 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard*, 21 March 2012, p. 26.

2 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard*, 21 March 2012, p. 11.

resources to help people work with migrants to learn about the Australian financial system';[3]

(c) ASIC's shadow shopping report continued to be progressed and would be released later in March; and

(d) a consultation paper on investment platforms was recently released proposing 'new requirements to strengthen operating requirements for platform operators, ensuring they have adequate resources and appropriate corporate structures and compliance arrangements'.[4]

3.5 Under the category of 'fair and efficient financial markets', ASIC told the committee that the publication *Do I need a licence to participate in the carbon markets?* has been released. The publication is designed to provide guidance 'to help businesses comply with the introduction of the Australian carbon pricing mechanism'.[5]

3.6 ASIC also noted that there has been a focus on enforcement and understanding ASIC's enforcement processes:

- For the first time, ASIC issued an enforcement policy outlining the circumstances, reasons and methods in which they take action in terms of investigation and enforcement.
- Since July 2011, ASIC has taken action against 30 directors, eight auditors, insolvency practitioners and liquidators and has taken action on seven inside trading in and market manipulation matters. In relation to consumers, ASIC had 63 actions involving 'dishonesty, fraud and misleading behaviour'.[6]

3.7 In terms of ASIC's strategic priority of 'efficient registry and licensing', the Commission told the committee that a new ASIC search portal called ASIC Connect was ready to be launched. This portal will allow Australians to search across asset registers and organisations and people. ASIC also noted that the national business names project was due to be launched in May 2012.

Enforcement and litigation

3.8 In response to recent work within the enforcement area, the committee questioned ASIC on the reasons behind decisions to investigate and/or pursue litigation. Mr Medcraft explained there are four key factors within the decision-making process:

---

3 Mr Greg Medcraft, Chairman, ASIC, *Committee Hansard*, 21 March 2012, p. 11.

4 Mr Greg Medcraft, Chairman, ASIC, *Committee Hansard*, 21 March 2012, p. 8.

5 Mr Greg Medcraft, Chairman, ASIC, *Committee Hansard*, 21 March 2012, p. 9.

6 Mr Greg Medcraft, Chairman, ASIC, *Committee Hansard*, 21 March 2012, p. 12.

> The first one is the amount of harm or loss that may have occurred if it is, say, in financial services or, if it is in the markets area, the effect in terms of the market issue. The second thing we look at is the cost versus the regulatory benefit that we get from taking an action. The third area that we look at is the availability of evidence. At times when there might be a significant amount of harm or loss and we might consider there might be a real regulatory benefit ahead of the cost but, if the evidence is not there, on balance, clearly we do not proceed. The fourth area we look at are what alternatives may be available in terms of getting an outcome in response to the particular issue that might have occurred.[7]

3.9 The committee has examined this issue of ASIC's regulatory and litigation strategy on several occasions at past oversight hearings. It reiterates the view that ASIC's approach is well founded.

Committee view

3.10 From time to time, the committee has queried ASIC's decision to use a particular enforcement power in a given case. As part of its recent report into the collapse of Trio Capital, the committee expressed concern that both ASIC and APRA's preference appeared to be for enforceable undertakings against former directors and auditors of Trio Capital, rather than disciplinary action through the Companies, Auditors and Liquidators Disciplinary Board. The Chairman of the CALDB explained in an answer to a question taken on notice:

> ...in recent times, very few matters have been referred to the Board. The reason for this is a matter which needs to be addressed to ASIC or APRA, although to some extent, the use of enforceable undertakings would explain the reduction in the number of matters being referred.[8]

3.11 The committee intends to follow up on these matters at future oversight hearings. It seeks ASIC's guidance as to why it has pursued enforceable undertakings as opposed to criminal action against those involved in the Trio Capital fraud. Is it possible for those individuals from whom ASIC has accepted enforceable undertakings to be referred to the CALDB? More generally, the committee is interested to know why it has not made more use of the CALDB following adverse findings from its own investigations into company directors, auditors and liquidators.

---

7 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard*, 21 March 2012, p. 13.

8 Mr Howard Insall, *Answer to question on notice*, 30 April 2012, Parliamentary Joint Committee inquiry into the collapse of Trio Capital.

Leighton's case

3.12 Following recent media coverage, the committee questioned ASIC on the recent infringement notice issued against Leighton Holdings.[9] ASIC explained that the decision served as a message to all other Australian listed companies:

> When we look at cost versus regulatory benefit, the regulatory benefit is that we were able to send a message to all Australian companies that we have taken action here in terms of the infringement notice but we have also taken forward-looking action, which I think is third point—that it is forward looking. It does not just say, 'You pay the infringement notice.' The company now has to bring in a consultant to look at their corporate governance processes. They have to make recommendations, implement them and then they are going to be reviewed each year for the next three years. So it deals with the problem but also looks forward. But I think what is important is how we leverage the result. Getting the message to Australian listed corporations—a timely reminder—to think about their governance practices to make sure that they are disclosing in a timely fashion.[10]

3.13 The committee noted that David Jones had placed itself into a trading halt as a result of the Leighton case. While ASIC would not comment on David Jones' decision, it explained to the committee situations where a trading halt is the appropriate course of action:

> ...once there is a leak in the market or there is discussion in the market and it looks as though the whole of the market may not be fully informed, pending making a full announcement, and it may take time to assess information, you should seek a trading halt. We and the ASX have worked together clearly to say a trading halt is an appropriate circumstance there. We work very carefully to make sure that all of the markets that trade on those stocks also go into trading halt around those stocks.[11]

Standards for Financial Advisors

3.14 The committee examined ASIC's work on standards for financial advisors in relation to the implementation of the FOFA reforms and self managed superannuation funds.

Future of Financial Advice Legislation

3.15 The committee tabled its report into the FOFA reforms on 29 February 2012 and made a series of recommendations in relation to the proposed legislation. It

---

9 ASIC, 'Leighton Holdings complies with three ASIC infringement notices for alleged continuous disclosure breaches and ASIC accepts compliance enforceable undertaking', *Media release*, 12-53, 18 March 2012.

10 Mr Greg Medcraft, Chairman, ASIC, *Committee Hansard*, 21 March 2012, p. 13.

11 Ms Belinda Gibson, Deputy Chair, ASIC, *Committee Hansard*, 21 March 2012, p. 14

supported the original commencement date of 1 July 2012, although it documented the various concerns of stakeholders with this implementation date.

3.16 The committee questioned ASIC regarding its preparation for the introduction of the proposed FOFA reforms. ASIC advised the committee that in response to recommendations in the committee's report on the proposed legislation, it had met with industry stakeholders to address concerns they may have and would be publishing consultation regulatory guidance by 1 July 2012:

> We have announced that we will be publishing regulatory guidance in four areas in relation to conflicted remuneration, scaled advice and how that can be effectively delivered, the best interests test and how advisers can comply with that test, and also guidance on the proposed changes to our licensing and banning powers. We will be undertaking that guidance very much through a consultative process. We will be releasing consultation documents that set out how we propose to approach these areas and seeking feedback and issuing final guidance.[12]

3.17 ASIC advised the committee that the final guidelines would be published in September this year, following an eight week period for consultation.[13]

3.18 On 14 March 2012, the Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP, announced an extension of the timeframe for the introduction of the reforms.[14] Businesses can voluntarily adopt the measures from 1 July 2012, although formal compliance will not commence until 1 July 2013. ASIC encouraged those businesses wishing to comply voluntarily to contact the Commission:

> Obviously, while not ideal, we have in the past applied or used policy that we have in consultation papers, as guidelines, to provide people with certainty. But certainly if anyone is looking at opting in early we would encourage them to come and speak to us.[15]

3.19 ASIC noted that while it had not received confirmation from any businesses that they would be adopting the requirements early, many had indicated they were considering voluntarily complying before 1 July 2013.

Committee view

3.20 The committee acknowledges that the government's announcement to delay compliance with the FOFA legislation by 12 months has allayed some industry concerns.

---

12 Mr Peter Kell, Commissioner, ASIC, *Committee Hansard*, 21 March 2012, p. 14.

13 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 21 March 2012, p. 16.

14 The Hon. Bill Shorten MP, 'Smoother transition for financial advice reforms', *Media release*, No. 13, 14 March 2012.

15 Mr John Price, Senior Executive Leader, ASIC, *Committee Hansard*, 21 March 2012, p. 15.

Self managed superannuation funds

3.21 Following the oversight hearing in November 2011, the committee continued its discussion of compensation for theft and fraud in relation to self managed superannuation funds (SMSFs). ASIC advised the committee that it would be placing an alert on its MoneySmart website notifying individuals setting up a SMSF that no compensation is available in the event of theft and fraud.[16]

Committee view

3.22 The committee's report on the Trio inquiry will be tabled in mid-May. The report dealt in part with the matter of compensation and the options to bolster protections from fraud and theft for investors in self managed superannuation funds.

3.23 In May 2012, the government-commissioned inquiry into a statutory scheme to compensate consumers of financial services delivered its final report. Its author, Mr Richard St John, concluded that it would be inappropriate to introduce a more comprehensive last resort compensation scheme. It argued that there would be an element of moral hazard if a last resort compensation scheme was introduced without a greater effort to put licensees in a position where they can meet compensation claims from retail clients. The report argued that this would reduce the incentive for stringent regulation of the compensation arrangements.[17]

3.24 Instead, the Richard St John report concluded that priority should be given to improve the protection of retail clients through a more rigorous approach to compliance by licensees. In particular, it noted that the regulatory platform for financial advisers and other licensees needs to be more robust and stable before a safety net, funded by all licensees, is put in place.[18]

3.25 The committee would like to examine the issues canvassed in the Richard St. John report in more detail, particularly as they relate to the issues raised in the Trio Capital collapse. Chapter 6 of St. John's report sets out some elements of how such a scheme could work if government were to decide to proceed with such a scheme. The report states that self managed superannuation funds (SMSFs) would not be included in the scheme. If the policy objections raised by Mr St. John to the operation of such a scheme can be overcome, the committee considers that it has merit.[19]

---

16 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard*, 21 March 2012, p. 26.

17 Mr Richard St John, *Compensation arrangements for consumers of financial services*, April 2012, p. iii.

18 Mr Richard St John, *Compensation arrangements for consumers of financial services*, April 2012, p. iv.

19 Mr Richard St John, *Compensation arrangements for consumers of financial services*, April 2012, chapter 6.

3.26 The committee's report into the Trio Capital collapse also supported an insurance scheme to which SMSFs could 'opt-in', enabling them to have protection against loss by reason of fraud or theft. The committee recommends that the government consider policy options for such an opt-in compensation scheme for SMSFs.

The Australian Charities Not-for-profits Commission

3.27 The committee also canvassed ASIC's role in relation to the not-for-profit sector. It questioned the commission on its likely role following the establishment of Australian Charities Not-for-profits Commission (ACNC) on 1 July 2012. ASIC explained that the commission's regulatory responsibility in the not-for-profit sector is quite small. Mr Medcraft noted that following the establishment of the ACNC, it is expected that ASIC 'will retain responsibility for the incorporation of these companies limited by guarantee as charities but the commission (ACNC) will take over responsibility for the governance arrangements'.[20]

Ms Deborah O'Neill MP
Chair

20 Mr Greg Medcraft, Chair, ASIC, *Committee Hansard*, 21 March 2012, p. 17.

Appendix 1

Public Hearings

Wednesday 21 March 2012

Takeovers Panel

Ms Kathleen Farrell, President

Mr Allan Bulman, Director

ASIC Representatives

Mr Greg Medcraft, Chair

Mr Warren Day, Regional Commissioner

Ms Belinda Gibson, Deputy Chair

Mr Peter Kell, Commissioner

Mr John Price, Senior Executive Leader

Mr Greg Tanzer, Commissioner

Appendix 2

Answers to questions on notice to ASIC

ASIC oversight hearing, 21 March 2012

Question 1 (Hansard, p. 12)

Topic: Legal services direction and in-house counsel

CHAIR: It certainly seems you have been very busy. Thank you for your opening statement. Having copies of that will be helpful. There is some material to discuss there in general but can I launch into some questions about litigation. The committee expressed a preference for the Attorney-General to consider extending ASIC's exemption under the Legal Services Directions that allows ASIC greater access to in-house counsel. What is the current status of ASIC's exemption under the Legal Services Direction that allows you greater access to in-house counsel?

Ms Gibson: I will have to come back to you on the details, that we do have some exemption, I think it is to use external counsel or non in-house is the exception to brief out. We have a number of panels that operate. We need to seek approval to go over a certain level of fees. I cannot tell you what that level of fees is now.

Mr Medcraft: We can take that on notice. Obviously we do comply with the Legal Services Directions and we do report the various firms that work and how we use it internally. It is probably better that we take that on notice.

<u>Response</u>

Under Direction 5 of the Legal Services Directions, an FMA agency may only use an in-house lawyer to conduct court litigation as solicitor on the record or as counsel with the approval of the Attorney-General.

ASIC currently has an approval to allow it to use in-house lawyers to conduct court litigation and appear as solicitor on the record, or directly brief counsel to appear, in relation to its enforcement and regulatory functions. ASIC had had an approval to this effect in place since it became an FMA agency in July 2007. The current approval has a life of one year and is due to expire on 30 June 2012. An application for renewal of the approval has been submitted to the Attorney-General's Department.

ASIC's current approval is subject to a number of conditions, including :

- periodic reporting to the Attorney-General's Department,
- notification of any significant changes in ASIC"s structure for the delivery or management of its internal legal services, or lines of accountability, and
- obligations to provide adequate training to ASIC lawyers.

Question 2 (Hansard pp 12–13)

CHAIR: This one will probably follow on, a bit of an outline of ASIC's internal and external costs over the past 12 months and a comparison with the 2010-11 financial year.

Mr Medcraft: Our legal costs.

CHAIR: Yes.

Response

No answer had been received when this report went to press.

Question 3 (Hansard pp 16–17)

Topic: ASIC and not-for-profit sector companies

Senator THISTLETHWAITE: I have just got two questions about the not-for-profit sector. Could you just outline the role that ASIC has in respect of regulation of the not-for-profit sector?

Mr Medcraft: Yes. John, would you like to touch on that?

Mr Price: ASIC has a fairly modest role in terms of the not-for-profit sector. The best example I can give in relation to that role is the regulation of companies limited by guarantee which may be providing not-for-profit type motives. However, when you look at the broader scope of all not-for-profits and the scope where ASIC may have direct regulatory responsibilities, it is actually very small. I have in my mind the figure of about four or five per cent that was in a report recently, but I will need to check that.

.....

Mr Medcraft: Basically, we cannot regulate 11,000 companies limited by a guarantee. This is obviously the most often used form for not-for-profit organisations and charities. As you know, the Australian Charities and Not-for-profits Commission is going to be established on 1 October. It will now go on to determine charitable status for all Commonwealth purposes. The legislation, as I understand, has not been finalised yet. I think the intention is that over time it will take over the regulation of all not-for-profit entities structured as companies limited by guarantee. I believe a general reporting framework will be established by 1 July 2013. It is expected, as I understand it, that we will retain responsibility for the incorporation of these companies limited by guarantee as charities but the commission will take over responsibility for the governance arrangements.

Senator BOYCE: For how long would you have responsibility for them?

Mr Medcraft: Ongoing for registration. My understanding is that it will be progressive, but the arrangements have not been finalised yet. Over time—

Senator BOYCE: Can you give us some more details on notice about the four to five per cent that Mr Price mentioned, including how many organisations and what sort of turnovers et cetera they would have?

Mr Medcraft: Sure.

Senator SHERRY: On that, could you give us something indicative? Presumably these would be larger charities. I am just not sure—

Senator BOYCE: Not necessarily.

Senator SHERRY: I am sure that is true, but I would be interested in an indication about whether we are dealing with what tend to be larger charities by size, or with microcharities—

Mr Day: Just as a caution, I do not know whether that would necessarily be evident from the information that is lodged with ASIC.

Response

There are 12,510 public companies limited by guarantee registered with ASIC. 10,434 are identified as not for profit companies.

ASIC role is to:

- register them
- maintain details (eg. changes of officeholder and address)
- annual reviews (pay fee annually to ASIC)
- some are required to lodge financial reports
- search details on public register
- related calls, enquiries, complaints, surveillance/deterrence

Question 4 (Hansard, p. 22)

Topic: Platform oversight overseas

Senator SHERRY: I understand why you are having a look at the area—platforms are a major feature of the financial landscape, not just here but around the world. What are the circumstances of platform oversight, licensing, regulation, elsewhere? For example, are they licensed in the UK and New Zealand, if we look at a couple of jurisdictions that are reasonably relevant to Australia? Do we know?

Mr Kell: We are happy to take that on notice.

Response

ASIC released Consultation Paper 176 *Review of ASIC policy on platforms: Update to RG 148* on 13 March 2012. This paper sets out our proposals for reviewing our regulatory approach to platforms. Specifically, we propose to:

- review our regulatory approach to platforms, given our initial guidance was issued in 2000 and has not been updated;

- strengthen operating requirements for operators of investor directed portfolio services (IDPSs), ensuring they have adequate resources to conduct their financial services businesses, supported by appropriate corporate structures and compliance arrangements;
- promote informed investor decision making about using platforms, including by requiring platform operators to disclose how they select financial products for inclusion on investment menus and setting out our expectation that advisers will consider investment selection processes when recommending use of a platform; and
- enhance investor rights when they invest through platforms so that platform clients are entitled to the same rights for investments through platforms as if they had invested directly.
- Submissions in response to this paper closed on 20 April 2012 and ASIC has commenced its review of these.

ASIC does not intend to change its position that platform operators will be required to hold an Australian financial services licence with tailored platform-specific conditions.

Noting that different jurisdictions characterise 'platforms' differently, which impacts on the approach (if any) taken to their oversight, ASIC draws attention to the following developments regarding regulation of 'platforms' in the United Kingdom and New Zealand:

- In August 2011, the United Kingdom's Financial Services Authority released its rules on platforms regulation following a review of this area in the context of its Retail Distribution Review. Its final policy, which covers platforms oversight and regulation, is available at: http://www.fsa.gov.uk/library/communication/pr/2011/067.shtml (note that the United Kingdom does not treat platforms as collective investment schemes);

  and

- In New Zealand, platforms and their providers are regulated by the Financial Market Regulator (http://www.fma.govt.nz/). The FMR's regulatory role is similar to that of ASIC in Australia. This website page describes their role and purpose in New Zealand http://www.fma.govt.nz/about-us/who-we-are/role-and-purpose/

Question 5 (Hansard p. 22)

Topic: Platform and administration entities

Senator SHERRY: [...] Given your interest in platforms, and administration entities are somewhat similar, and given their critical importance to obviously robustness and operation et cetera in the superannuation area particularly but in other areas, have you given any consideration to an examination of that area?

Mr Price: I cannot answer that question off the top of my head now but I am happy to take it on notice

Response

Administrators only require an Australian financial services licence (AFSL) where they provide financial services. The administration performed by those that do not have an AFSL do not fall directly within ASIC's jurisdiction.

The Australian Prudential Regulation Authority (APRA) has look through access to superannuation administrators through the outsourcing contract between the APRA-regulated trustee and their administrator, which requires the administrator to provide APRA access to their business. Superannuation trustees remain responsible for their fund's administration, even where that function is outsourced.

Responsible entities also remain directly responsible for the administration of managed funds, even where the administration function is outsourced. As part of ASIC's supervision of responsible entities, we monitor outsourcing arrangements and expect that they have adequate monitoring of their service providers, including administrators. Adequate monitoring would typically include regular reporting and independent review of the providers.

ASIC monitors and considers all breaches and complaints relating to the administration of an entity or function that falls within our jurisdiction, such as the administration of a managed fund or super fund. In these circumstances, ASIC may engage with both the superannuation fund trustee or responsible entity, as well as the administrator of the relevant fund, as required.

Question 6 (Hansard p. 23)

Topic: Procedures for a change of responsible entity

Mr FLETCHER: Is it the case that there is a requirement under the law for there to be a meeting of investors and a vote in favour of a change in the responsible entity?

Mr Price: In some cases, yes. Actually, I would prefer to take that question on notice. I think that is a fairly technical question.

Response

Where a responsible entity of a registered managed investment scheme (MIS) can change

A change in the responsible entity of a registered MIS is complex and may occur because:

- the responsible entity wishes to resign - s601FL of the *Corporations Act 2001*.
- the members have called a meeting and voted to remove and replace the responsible entity - s601FM

- the responsible entity has ceased to meet the requirements of s601FA and ASIC or a member has made application to the Court for the responsible entity to be replaced – s601FN
- ASIC or a member has made application to the Court to have a temporary responsible entity appointed to protect scheme property or the interests of members of the scheme - r5C.1.02 of the *Corporations Regulations 2001*.

Resignation

Where the responsible entity wishes to resign, the procedure for retiring is set out in s601FL. Essentially, the procedure is that if the retiring responsible entity has chosen a successor that meets the requirements of s601FA and that has consented to act as responsible entity for the MIS, the responsible entity must call a meeting of members to "explain its reasons for wanting to retire" and to allow members to "vote on a resolution to choose a company to be the new responsible entity". Case law provides that there is no requirement that the notice calling the meeting must itself explain the responsible entity's reason or reasons for wanting to retire; that explanation may wait for the meeting: *ASIC* v *Wellington Investment Management Ltd* [2008] QSC 243.

The resolution must be an extraordinary resolution if the MIS is unlisted, but need only be an ordinary resolution if the MIS is listed on ASX. An extraordinary resolution is a resolution that must be passed by at least 50% of the total votes that may be cast by members entitled to vote on the resolution (including members who are *not* present either in person or by proxy).

Responsible entities may apply to ASIC for relief from the obligation to hold a meeting to resign. ASIC considers each application for relief it receives on its individual merits. In considering whether the relief should be granted, ASIC generally weighs up a range of factors, including the costs of compliance and the potential disadvantages for investors.

ASIC has previously exercised its discretionary powers to grant relief where:

- the retiring responsible entity and the proposed responsible entity are members of the same corporate group and as such the change will be unlikely to have a significant adverse impact on the administrative, custodial, asset management or operation of the syndicate; and
- there are significant costs associated with holding a members' meeting which members indirectly bear if the retiring responsible entity is required to hold a meeting in circumstances where the practical change to the MIS is minimal. The retiring responsible entity has a right to indemnify itself from the assets of the MIS for all costs incurred in arranging and holding the members' meeting.

However, the responsible entity is still required to undertake a procedure to effect its retirement and the appointment of a new responsible entity under the instrument of relief. This type of relief requires the retiring responsible entity to advise members by notice of its intention to resign and the intended appointment of the proposed responsible entity. If a sufficient number of members believe a vote should occur on the resolution to choose a new responsible entity and advise the retiring responsible

entity of this, it is required to arrange for a postal vote or convene a meeting to allow members to vote on the resolution to appoint the proposed responsible entity.

Removal

Members of an MIS are empowered to remove the responsible entity under s601FM or under provisions of the constitution.

If the members initiating the action nominate a replacement responsible entity that meets the requirements of s601FA and that has consented to act as responsible entity for the MIS, those members may call a meeting to consider and vote on the resolution to remove the responsible entity and a separate resolution approving the new responsible entity. However, in order to call such a meeting, there must be a written request to the responsible entity signed by members with at least 5%of the votes that may be cast on the resolution or at least 100 members who are entitled to vote on the resolution. The request for a meeting may be accompanied by a statement from the members, which the responsible entity must distribute if it meets certain criteria.

Again, the resolution must be an extraordinary resolution if the MIS is unlisted, but need only be an ordinary resolution if the MIS is listed on ASX

If the MIS ceases to have a responsible entity that meets the requirements of s601FA, a member or ASIC may apply to the Court for the appointment of a temporary responsible entity under s601FN. This will occur if the responsible entity is deregistered or changes type and ceases to be a public company, or if it loses its operating Australian financial services licence.

Alternatively, ASIC or a member may apply to the Court for the appointment of a temporary responsible entity if they reasonably believe that the appointment is necessary to protect scheme property or the interests of members of the MIS under r5C.1.02.

Question 7 (Hansard p. 23)

Topic: Change in responsible entity and ongoing liability

Mr FLETCHER: What is the consequence of a change in responsible entity for a party that may be wanting to take action against the previous responsible entity?

Mr Price: My recollection is that the liabilities of the previous responsible entity remain in place up until the time that they are replaced. But again, I would like to check that.

Response

The consequences depend on whether the party wishes to sue the former responsible entity in its capacity as the former responsible entity of the registered managed investment scheme (MIS) or in its own right.

Generally, a responsible entity will be sued in its capacity as the responsible entity of an MIS.

In its capacity as the responsible entity of the registered MIS

On a change of responsible entity of an MIS, the rights and liabilities of the old responsible entity in relation to the MIS generally become rights and liabilities of the new responsible entity under s601FS of the *Corporations Act 2001*. This means that a party could generally sue the new responsible entity in its capacity as the responsible entity of the MIS, even if the debt accrued prior to the change of responsible entity.

However, the following rights and indemnities do not transfer to the new responsible entity.

- the former responsible entity's right to fees for functions performed before the changeover – s601FS(2)(a)
- the former responsible entity's right to recover expenses incurred before the changeover -s601FS(2)(b)
- former responsible entity's rights, obligations and liabilities as a member of the MIS - s601FS(2)(c)
- any liability for which the responsible entity could not be indemnified out of scheme property if it had remained as responsible entity - s601FS(2)(d)

These liabilities remain with the old responsible entity.

What is a liability in respect of which the old responsible entity could not have been indemnified is a complex legal question, but in general terms it is likely to include a liability for improper conduct. The aim of this provision is to enable the new responsible entity to readily take over the operation of the MIS while leaving the old responsible entity liable to members and creditors in relation to any conduct of that kind. Case law provides that the effect of this provision in relation to a debt entered into by the old responsible entity is that a creditor would not know whether it should sue the former responsible entity or the new responsible entity for its debt, unless it could determine whether the former responsible entity was entitled to an indemnity - *Re Stacks Managed Investments Ltd (2005) 23 ACLC 1,647.*

In its own right

It is always open to members or creditors to sue a responsible entity in its own capacity if a suitable cause of action exists. Whether a responsible entity will be liable will be a matter for the Courts to determine. This is the same irrespective of whether there is a change of responsible entity.

If a member or creditor decides to sue a former responsible entity in its own capacity, its solicitors should generally undertake an investigation about its ability to satisfy a decision against it prior to commencing the litigation. This is because the financial position of each individual responsible entity will vary.

A change of responsible entity could impact on the financial position of a responsible entity, however, this will not always be the case.

Question 8 (Hansard pp 23–24)

Topic: Notification to members of relief in case of change in responsible entity

Mr FLETCHER: One of the things I am interested in is whether, if an application is made—as I understand was the case with Centro—for a change of responsible entity, and the result of the relief being granted is that there is no need to go to an investors meeting, that at least theoretically impacts on the rights that would be available to investors; for example, to take action against a previous responsible entity. My question therefore is: is notice given to members that the responsible entity has sought this relief?

Mr Price: Again we have a regulatory guide that deals with natural justice, and you will need to forgive me but I cannot recall the exact number of that regulatory guide.

Mr FLETCHER: Take it on notice.

Response

Yes. If ASIC grants relief from the requirement in s601FL of the *Corporations Act 2001* to hold a members' meeting, a condition of that relief requires that the responsible entity send a notice to members of its intention to resign and the intended appointment of the proposed responsible entity.

The notice to members must set out:

(1) the responsible entity's reasons for wanting to retire;

(2) information about the timing of the retirement and the manner in which that retirement must occur and where to obtain updates on this information;

(3) information that is material to a member in forming a view as to the choice of the proposed responsible entity;

(4) a statement that:

(a) if members who together hold at least 5% of the total value of the interests held by members or 100 members who would be entitled to vote if the proposal were put as a proposed resolution to a meeting, ask for a vote by giving written notice, the responsible entity will either arrange a postal vote or convene a meeting to vote on a resolution for the choice of the proposed responsible entity; and

(b) a reply paid address of the responsible entity to which the form may be sent.

The notice must also be accompanied by a form which can be ticked to ask for a vote; and

There is no similar requirement in s601FL for the notice sent to members calling a meeting to contain such content. In addition, case law provides that there is no requirement that the notice calling the meeting must itself explain the responsible entity’s reason or reasons for wanting to retire; that explanation may wait for the meeting: *ASIC* v *Wellington Investment Management Ltd* [2008] QSC 243.

Question 9 (Hansard, p. 24)

Topic: Interests of members of managed investment schemes in granting relief

Mr FLETCHER: Can I ask you to take on notice the question of whether—either in the specific instance of Centro, as reported in the press, or more generally—the practice that ASIC has of granting relief properly takes account of the interests of members of a managed investment scheme.

Mr Price: I am happy to take that on notice, but I would certainly suggest that third parties would have rights to challenge any ASIC decision if it did not take into account what is a relevant factor in making an administrative decision.

Response

ASIC considers each application for relief it receives on its individual merits.

In considering whether relief from the requirement in s601FL of the *Corporations Act 2001* to hold a members' meeting for the responsible entity to retire and be replaced with new responsible entity should be granted, ASIC weighs up a range of factors. These included the costs of compliance, commercial benefits for the responsible entity, the policy behind s601FL and the potential disadvantages for members of the MIS.

There are significant costs associated with holding a members' meeting which members indirectly bear if the retiring responsible entity is required to hold a meeting in circumstances where the practical change to the MIS is minimal. The retiring responsible entity has a right to indemnify itself from the assets of the MIS for all costs incurred in arranging and holding the members' meeting. In these circumstances, ASIC often considers that, on balance, it is in the interests of members of the MIS to avoid the significant costs associated holding such a meeting.

ASIC always tries to reduce or eliminate the impact of a decision on third parties by imposing suitable conditions on the relief granted or by narrowly confining the scope of the relief. In the case of relief granted from s601FL, ASIC imposes a condition on the relief that requires the retiring responsible entity to advise members by notice of its intention to resign and the intended appointment of the proposed responsible entity. If a sufficient number of members believe a vote should occur on the resolution to choose a new responsible entity and advise the retiring responsible entity of this, it is required to arrange for a postal vote or convene a meeting to allow members to vote on the resolution to appoint the proposed responsible entity.

ASIC is required to afford procedural fairness to third parties who may be affected by a decision. Who is affected by a decision is a complex legal question that will depend on the circumstances surrounding the decision being made and how it affects the third party. A member of an MIS would not automatically be a person affected by a decision made by ASIC.

Even if ASIC determines people are affected by its decision, it does not necessarily have to consult with every person who may be affected by its decision and be entitled to receive notification of the decision once it has been made. ASIC would not

generally consult with all of the members of an MIS in making a decision in response to an application for relief, as this would be impractical.

If the interests of a member of the MIS are affected or aggrieved by ASIC's decision, they may also have standing to challenge ASIC's decision in the Administrative Appeals Tribunal or Federal Court (respectively). Again, the issue of whether a member would have standing is a complex legal question that will depend on the circumstances surrounding ASIC's decision and how it affects the member. This question would be determined by the AAT or the Federal Court if a member was to make an application for review of ASIC's decision.

Question 10 (Hansard p. 24)

Topic: Contact address of Mr Maher (Gresham)

Mr FLETCHER: It has been put to me that there ought to be a public examination of Mr Maher but that a logistical difficulty is that the liquidators are unable to obtain his address. Is Mr Maher's address in the possession of ASIC and are you willing to provide it to the liquidators?

Mr Price: I will take that on notice.

Response

Mr Maher has provided a contact address to ASIC. He provided this information to ASIC on a confidential basis. There are statutory restrictions on ASIC giving out information provided to it in connection with the performance of its functions.

In the absence of consent or a legally enforceable demand it is not open to ASIC to give the liquidator Mr Maher's address. Mr Maher has declined to provide that consent. ASIC also recommended to Mr Maher that he approach the liquidator to discuss the issue.

Question 11 (Hansard p. 25)

Topic: Recovery of money

Mr FLETCHER: Given that investors have lost tens of millions of dollars, as we all know, and given that a problem with this case or this affair appears to be that everybody who might reasonably be expected to have funds against which action could be pursued turns out to have empty pockets or not to be in the jurisdiction, in the course of securing an enforceable undertaking from Mr Maher, formerly Mr Gresham, did ASIC give consideration to the issue of assets held by him and whether you could put your foot on them so that they did not mysteriously disappear from the jurisdiction?

Mr Day: I think that is the question we would take on notice.

Mr Medcraft: However, I just need to establish whether it is something we can comment on.

Mr FLETCHER: I understand.

Response

On information currently available to ASIC there appears to be little money available for recovery (under insurance policies or otherwise) from any of the participants, financial advisers or other relevant persons associated with the ARP Growth Fund, including Mr Gresham. ASIC has therefore not sought an asset preservation order or otherwise commenced civil proceedings to recover damages on behalf of ARP Growth Fund investors.

ASIC has been liaising with the liquidator of Trio Capital Ltd with the view to possibly providing funding for the purposes of examining Mr Gresham with the view to (among other things) tracking the flow of funds from ARP Growth Fund.

Question 12 (Hansard p. 25)

Topic: Trust Company and PPPST

Mr FLETCHER: [...] I have another question that I would like to ask coming out of the enforceable undertaking. You refer in the enforceable undertaking to the fact that the trust company did not approve changes to the investment policy that were proposed back in 2004 when the trust company was the trustee of Professional Pensions PST. The trust company was subsequently removed as trustee of Professional Pensions PST. Did ASIC receive any notification from the trust company at that time that it had concerns about the investment policy being pursued by Professional Pensions PST?

Mr Medcraft: I will take that on notice.

Response

ASIC was not notified by Trust Company that it had concerns about the investment policy being pursued by Professional Pensions PST. APRA is the primary regulator of pooled superannuation trusts and ASIC is not aware whether Trust Company notified APRA.

Question 13 (Hansard p. 26)

Topic: Senate order files

Senator BOYCE: [...] Given that we are on time, I have one more question. You would be aware of an article on February 16 in the *Age* again by your close friend, Mr West, Senator Sherry— which claims that ASIC is in contempt of the Senate. Would you like to comment on that?

Mr Medcraft: I think you are talking about the order in relation to files.

Senator BOYCE: Filing every six months or sending through your files every six months.

Mr Price: We obviously had a close look at that following the Michael West article.

Senator BOYCE: I imagine you would have.

Mr Price: We think our reporting against the Senate order has been consistent with our interpretation of the order but, following Mr West's article, we had a look at how various other agencies, including Treasury, Department of the Prime Minister and Cabinet and a variety of others, seek to comply with that order. Based on that research, we are looking at updating our processes and guidelines at the moment and, in particular, in light of the fact that we are largely moving away from paper based files to electronic management.

Senator BOYCE: Given the time, Mr Price, perhaps you could take that question on notice and give me a very detailed response to (a) the claim and (b) what you are doing in reaction to the claims.

Mr Kell: We can take that on notice.

Response

ASIC has considered the claim by Mr West that ASIC was in contempt of Senate by not releasing all relevant file titles given that there had been a noticeable reduction in the number of files released under the order since 2009. Under the Order, ASIC is required to produce a file list relating to its policy advising functions, but does not include internal administration or case files, or parts of titles that could disclose confidential or identifiable personal or national security matters. ASIC's file list reporting has been consistent with our interpretation of the requirements of the Order. The number of file titles reported is not a reflection of the amount of policy work undertaken or how policy is developed.

ASIC also conducted a review of the internal processes to meet Senate Order 10 requirements. The review identified a change in interpretation of the requirements of the Order. This occurred with a move from a hard copy file system to an electronic document management system, combined with a change of personnel responsible for the process, following an internal restructure.

The introduction of an electronic document management system in 2009 has increasingly reduced the number of physical records being created. This has impacted on the number of files and file parts being reported as:

- Less file parts need to be created to manage physical records; and
- The increase in records being managed electronically changed the way files and documents are created, used and managed.

ASIC considered the interpretation of the guidelines and the processes used in other agencies to report against this Senate order including Treasury, Department of the Prime Minister and Cabinet and a number of other agencies. We have updated our internal guidelines and implemented new processes that are more consistent with those used in other agencies.

The new process will:

- Provide clearer instructions and guidelines for staff on what makes a file title, or part title, eligible to be exempt from being included on the Senate Order 10 file title list;
- Identify file titles at creation stage if they are eligible to be exempt, or partly exempt;
- Improve reporting from records systems on file titles to be included in the list; and
- Include a quality assurance process to review file titles identified by users as being exempt or partly exempt. This process will also review the full list of titles to ensure that those released do not breach confidentiality or privacy requirements.

To support the new, process change initiatives are being introduced for users on file titling and managing information regardless of format. This will form part of ASICs compliance with the Government's digital transition policy.

Questions 14–17 (Hansard p. 26)

CHAIR: [...] There is still work here that we did not get to, particularly regarding the business names register and some further dimensions about financial literacy. I would particularly like to ask questions about additional areas of the responsibility that you have acquired and how things are going in that space, so expect some questions from us on that.

Question 14

Topic: Business names register

a. Have all states referred relevant powers to the Commonwealth in relation to the registration of business names?

   Response

   Yes.

b. Was the nationalisation of business names registrations part of the Australia-New Zealand Closer Economic Relations (CER) reforms and is similar legislation being passed in New Zealand?

   Response

   No.

c. Does ASIC see any further changes in the registration requirement and/or regulation of small businesses in relation to the objectives of the CER reforms and in ASIC's oversight role?

   Response

   No, our goal is to work with the NZ companies office (MED) over time to have greater integration of our services in relation to registry searching and company

registration. There are no plans for law reform and work is subject to priorities and funding.

d. ASIC currently has oversight of companies, are there any talks of extending ASIC's powers of oversight to small businesses?

Response

Business names reforms already cover various sole traders and unincorporated bodies.

e. Has there been any further investigation into a potential conflict between the permitted use of ASIC's business names database, and reporting requirements under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)?

Response

Not at this time.

f. Will the new Small Business Commissioner have any role in arbitration should a conflict arise in the registration of business names and will ASIC have any regulatory interaction with the new commissioner?

Response

ASIC does not expect to have regulatory interaction with the new Small Business Commissioner with respect to business names, but will be very happy to liaise as appropriate. This is because ASIC's powers are to administer the register, and there is a right of appeal to the Administrative Appeals Tribunal as per normal processes. Some names applications also require ministerial consent.

g. What consultations has ASIC had with the Department of Industry, Innovation, Science, Research and Tertiary Education to ensure that the online registration system is working properly?

Response

The Department of Industry, Innovation, Science, Research and Tertiary Education is the program lead for reforms. Liaison is very close and regular via formal governance structures (such as the Steering Committee) and less formal mechanisms (such as daily and weekly meetings.

h. In November 2010, ASIC informed the committee that it is developing a workforce plan for the National Business Names Register to identify resource requirements for the first three years post commencement. Has the workforce plan been effective?

Response

Yes, the business names team is established and effective, in preparation for the commencement of the ASIC Business names registration function on 28 May 2012.

Question 15

Topic: Consumer Credit

ASIC told the committee in March 2011 that it was prioritising the development of the skills and expertise of its staff in consumer credit issues relating to the provision of credit services by unlicensed and unregistered persons. How have these staff developments progressed?

Response

The development of skills and expertise of ASIC staff about consumer credit issues has been a priority for ASIC prior to and since the commencement of the National Consumer Credit regime. Before to the commencement of the national regime, ASIC employed a total of 44 staff nationally, ten of which were recruited from the State and Territory agencies that had responsibility for the regulation of consumer credit. In addition to recruiting staff with existing skills and experience in consumer credit, ASIC staff have developed their skills through formal training and through industry and community engagement. These activities have provided ASIC with significant insight and understanding of the issues arising from the provision of credit services by unlicensed providers and has also informed ASIC's regulatory responses to such conduct.

1. **Formal training**

Prior to the beginning of the National Consumer Credit regime, all ASIC staff were given formal training in the fundamentals of the new legislation. More specific training was provided to those teams with day-to-day responsibility for the regulation of the National Consumer Credit legislation.

A total of 67 training events were delivered covering topics such as the National Consumer Credit Code, Responsible Lending, Licensing, Deterrence, and Hardship & Debt Collection Practices. Since October 2010 credit training has become a business as usual activity with training delivered to staff according to need. ASIC continues to offer online modules to all new staff on the fundamentals of the consumer credit regime.

2. **Industry and Community engagement**

(a) Unlicensed / Unregistered surveillance campaigns

ASIC's role in administering the national consumer credit regime includes receiving and investigating complaints about unlicensed businesses that engage in credit activities.

In addition, ASIC has undertaken proactive surveillance campaigns aimed at identifying businesses that engage in credit activities that are unregistered and unlicensed. These campaigns commenced in September 2010 with a focus on ensuring that entities advertising credit services were registered with ASIC. This was followed with a second campaign to identify entities involved in consumer credit without a licence.

As part of the unregistered surveillance campaign, ASIC checked almost 5,000 businesses which advertised credit services to establish whether they had registered with ASIC. Most businesses (94%) were found to have registered and follow-up action was taken in relation to the remaining 6%. In relation to the unlicensed surveillance campaign, ASIC has checked entities that applied for, but were not granted, a credit licence. A number of these are subject to follow-up action.

In order to conduct these campaigns, staff involved were provided specific training on the credit registration and licensing requirements.

(b) Indigenous Outreach Program and Credit Outreach Teams

ASIC's Indigenous Outreach Program (IOP) conducts outreach visits to Indigenous communities providing information to and receiving complaints from consumers about financial services including consumer credit. ASIC considers the work of the IOP especially significant with respect to identifying credit issues that are particularly unique to remote indigenous communities.

ASIC's Community Outreach Team (COT) is responsible for the development and implementation of consumer education initiatives to Australian consumers. A major focus of the COT is to work within the community to assist consumer advocates and consumers understand the regulation, rights and remedies pertaining to consumer credit and importantly to identify unregistered and unlicensed activity. As part of this work, the COT conducted a National Consumer Advocacy Roadshow that involved rolling out training in every state and territory to consumer advocates such as Financial Counsellors and Community Lawyers. Over 600 participants across the country attended the sessions.

This type of community engagement has assisted ASIC’s understanding of the issues that arise from the provision of credit services by unlicensed providers to vulnerable, disadvantaged and indigenous communities. Through these programs ASIC also has also developed a greater understanding of the issues that face the entities that offer assistance to these communities such as the not for profit sector, the consumer advocacy sector and legal services.

Question 16

Topic: Insolvency profession

a. Has ASIC increased its resources in the insolvency area?

Response

ASIC has adequate though finite resources devoted to the insolvency area. ASIC has a dedicated stakeholder team staffed with a budgeted 28 FTE's for the 2011 – 12 financial year to assist us regulate registered liquidators through compliance activities including proactive reviews of insolvency practices. level of 28 FTE's remains unchanged from the previous 2010 – 11 financial year. FTE levels for the 2008 and 2009 financial years were 22 and 26 respectively.

b. How many referrals has ASIC made to the Companies Auditors and Liquidators Disciplinary Board over the past year? How does this compare with referrals made in the previous 12 months?

Response

ASIC can refer appropriate instances of non compliance with the Corporations Act to the CALDB for both auditors and liquidators.

ASIC referred one matter to the CALDB in both of the 2009/10, and 2010/11 years with one matter finalised in the 2011/12 year.

It should be noted that the CALDB is but one option available to ASIC to assist in dealing with liquidator compliance or taking enforcement action. Other options include agreeing to enforceable undertakings, court action or taking administrative action for certain breaches of the Corporations Act such as having inadequate insurance or failing to lodge an annual statement.

c. How many complaints has ASIC referred about liquidators and administrators over the past 12 months?

Response

ASIC's Insolvency Practitioner Team referred 11 matters to the Deterrence Team in the 12 months to 31 March 2012. We cannot reveal the names of the matters referred as investigations remain ongoing.

Question 17

Topic: Financial literacy

a. In June 2010, the committee raised with ASIC the question of what populations need attention when targeting financial literacy activities. ASIC was to discuss the matter with the Financial Literacy Board in March 2011[1]. What was the outcome of these discussions?

Response

The National Financial Literacy Strategy (available at www.financialliteracy.gov.au) sets out the populations that will be targeted by the financial literacy initiatives set out in the Strategy. Some of these are very broad categories and some are specific targeted groups.

The specific targeted groups are those groups that are most in need of financial literacy assistance: that is, retirees and pre-retirees, young people, Indigenous Australians, women and others over-represented in the lowest financial literacy

1 See *Statutory oversight of the Australian Securities and Investments Commission Report*, February 2011, p. 12

quintiles or excluded from traditional avenues for financial information and advice.

The broader categories are all Australians that have or can potentially access financial products. The Strategy makes it clear that in targeting those broader groups, it will focus on:

- the areas with the greatest potential to achieve lasting generational change; and
- the financial issues and products that are poorly understood and whose misuse or non-use can cause the greatest harm.

These priority areas were approved by the Australian Government Financial Literacy Board as part of its overall endorsement of the Strategy.

ASIC has numerous initiatives aimed at the targeted groups listed above. For example:

- for retirees and pre-retirees, we have targeted content on the MoneySmart website (such as information about investing basics, ensuring their super is on target, retirement income planning, specific high risk products commonly sold to this group such as CFDs and hybrid notes; and calculators such as a retirement planner, a reverse mortgage calculator, and a budget planner), publications such as our recent booklet *Financial Decisions in Retirement* which focuses on financial decisions at the point of retirement, our earlier publication on reverse mortgages and our *Investing Between The Flags* campaign (booklet and seminars);
- the website also has dedicated content and publications for each of the other population segments identified above, including under 25s (using web content, video and social media, and on issues such as leaving home, studying, university debt, buying a car, mobile phones and starting work), women (dealing with their most important financial issues such as separation and divorce, superannuation and retirement) and the Indigenous community (for example on paying for funerals, book up, door to door sales, and getting help with money);
- ASIC also has a credit outreach team and an Indigenous outreach team that each work with many of those excluded from traditional avenues for financial information and advice, and who may lack access to the Internet. These outreach teams work in partnership with other agencies such as the community welfare sector, consumer advocates, FaHCSIA, Centrelink, the Dept of Immigration and Citizenship and the Dept of Health and Ageing, to disseminate their messages to the most vulnerable consumers. Recent outreach team work has included a campaign on mortgage stress and a money management kit for newly arrived migrants, developed as a resource for settlement workers who work with newly arrived communities. Their current focus is on projects for youth in transition and for the elderly.

b. Can you advise the committee about how the National Financial Literacy Strategy is progressing?

Response

Implementation of the National Financial Literacy Strategy is progressing well. Progress on key initiatives under the Strategy is summarised below.

The Strategy has four pillars, namely:

i. Education through schools and other pathways;

ii. Providing trusted and independent information, tools and ongoing support;

iii. Recognising the limits of education and information and developing additional innovative solutions to drive improved financial wellbeing and behavioural change;

iv. Working in partnership with the many sectors involved with financial literacy, measuring our impact and promoting best practice.

ASIC is implementing and/or participating in a range of initiatives under each of these broad headings, as set out below.

Education through schools and other pathways:

ASIC has successfully lobbied for financial literacy to be included in the new Australian Curriculum being phased in over the next few years. The first phase will cover financial literacy aspects in the Mathematics, English and Science disciplines.

Helping Our Kids Understand Finances

ASIC is implementing the *Helping Our Kids Understand Finances (HOKUF)* initiative in partnership with state and territory education authorities over 2012/13. The project will deliver face-to-face professional learning, linked to the Australian Curriculum, for 6,000 teachers in Australian primary and secondary schools by the end of 2013. The professional learning will build teachers' capacity to integrate consumer and financial literacy education into the Australian Curriculum, as referred to above. A 'MoneySmart Teacher' package is being developed that will include units of work for teachers as well as guidance and support for parents. Drafts of the primary professional learning package are being reviewed by a reference group of representatives from all education jurisdictions and other key stakeholders.

ASIC also has a financial literacy website for teachers: www.teaching.moneysmart.gov.au. Content of the site will be progressively extended over 2012-2013 as resources developed under the *HOKUF* project are uploaded. A range of online and digital resources are being developed that will

support the consumer and financial literacy content in the Australian Curriculum and help teachers engage students in 'real world' financial literacy contexts. Units of work developed and trialled under the indigenous Milba Djunga ('Smart Money') website project are also being revised to align them with the Australian Curriculum (see www.teaching.moneysmart.gov.au for a link).

Financial literacy in vocational education and training

ASIC is partnering with the Australian Taxation Office, Innovation and Business Skills Australia (IBSA - the national skills council for the financial services industry) and Group Training Australia (GTA) to develop and trial two new MoneySmart competencies. Both competencies will be freely available and self-assessing online modules. They will be trialled by GTA through their 35,000 apprentices.

The first competency, *Being MoneySmart*, is a Certificate III apprentice trade level competency. It will cover a financial health check, personal money management, personal tax, insurance and superannuation, and next steps such as using trade skills as an asset for future opportunities. The second competency, *Being MoneySmart in Business*, will be a Certificate IV licensing level competency. It will cover establishing a small business, being a contractor, business planning, managing business finance (including credit and debt management) and business requirements and compliance (tax, super and insurance).

Providing trusted and independent information, tools and ongoing support:

Research tells us there are widely differing levels of financial knowledge across the population, some financial products and decisions are less well understood than others and people have different preferences about how and from whom they want to receive information. In order to be effective, financial literacy efforts must respond to these differences.

MoneySmart website

The MoneySmart website is a key plank of the Strategy. Since launch in March 2011 MoneySmart has had over 1.8 million unique visitors; and over 2.3 million overall visits. It averages over 150,000 unique visitors per month. The site has around 300 pages of content, with information available in 26 languages. There are 26 calculators and tools, including 5 mobile calculators.

MoneySmart's monthly e-newsletter goes out to 20,000 subscribers, and 2,000 external sites link to the site. MoneySmart also uses social media to help promote its content. It has over 1,300 Twitter followers and over 800 Facebook fans, and reaches on average around 40,000 people via Twitter each month. MoneySmart's many videos available via YouTube have been over viewed over 41,000 times.

In late 2011 MoneySmart won the award for best Government Website at the 2011 Australian Web awards. It was also one of only 10 sites out of 200 investor

protection sites ranked by IOSCO that was rated "outstanding" and given a 5/5 rating.

Publications, radio, outreach

As noted above, the Strategy acknowledges that people have different preferences about how they want to receive information. It also explicitly recognises that not everyone has Internet access, so we also ensure that we push our materials out by other means such as print, radio and face to face.

For example, the MoneySmart team manages more than 70 publications that can be ordered for free by calling ASIC's Infoline on 1300 300 630 or downloaded from the website. Around 25,000 hard copy publications are distributed per month, both to organisations and individual consumers. There are publications on credit, debt, investing and super, as well as more complex topics such as hybrid bonds, debentures, cap guaranteed products and CFDs.

We also run radio campaigns on particular issues for specific audiences, such as community radio segments for Australia's culturally and linguistically diverse (CALD) and Indigenous communities on issues such as credit, debt and book up; and our outreach teams do regular face-to-face presentations on money management issues to people who are excluded from traditional avenues for financial information and advice and/or who do not have web access.

<u>Developing additional innovative solutions to drive improved financial wellbeing and behavioural change:</u>

The Strategy recognises that financial literacy is not just about increasing knowledge of money matters and financial products, but actually helping and empowering people to take action to achieve greater financial wellbeing. The end goal is behavioural change, so the Strategy must look beyond education and information provision.

Thus one of the key principles of MoneySmart is to provide reliable personalised money guidance tools that are free, readily accessible, independent and of high quality, designed to engage people and motivate them to take action. They help people set goals, act on the guidance and stick with their plan over time.

The MoneySmart site has 26 calculators and tools that highly interactive and personalised, so as to maximise return visits. They include 5 mobile calculators in a Smartphone app that has been downloaded by 85,000 people so far. Users can log in and save and retrieve their results for 13 calculators including the budget planner, savings goal calculator, mortgage switching calculator and retirement planner.

In terms of our progress to date in prompting people to take action, our first survey of site users (done in August 2011) showed that 82% rated the site as useful and

39% as very useful, and 91% of users said they had taken action as a result of visiting the site.

Additional tools planned for release this year include a 'money health check' that will help people identify the areas where their finances are not in order, and the top 5 actions they should take; and a Spending Tracker phone app. We are also working on upgrading our calculators so they will work on iPads and other tablets.

Product suitability

The Strategy also acknowledges that, especially in a market characterised by increasingly innovative, complex and high-risk products, education programs alone are not sufficient to improve behaviour and alternative or additional strategies are needed. Thus ASIC is entering the debate about the suitability of certain products for retail investors, and whether it is appropriate that products such as for example CFDs, CDOs and hybrids can be freely sold to all. We also continue to reinforce the message: 'If you don't understand it, don't buy it'.

Working in partnership:

MoneySmart Week

The Australian Government Financial Literacy Board has established a non-profit company to organize an annual MoneySmart Week, to be held this year from 2-8 September. Over 50 industry and community and government groups are contributing to the event. ASIC is supporting MoneySmart Week by lending its MoneySmart brand to the initiative, building a MoneySmart Week website and acting as Secretariat for the four teams of volunteers working on different aspects of the initiative. A key objective of the Week is to promote partnerships between government, community organisations and corporates. The main call to action this year will be for people to do MoneySmart's money health check.

Financial Literacy Community of Practice

ASIC hosts monthly meetings via video conference of the Financial Literacy Community of Practice (CoP). The CoP promotes open dialogue, partnership and networking on financial literacy and is a valuable avenue to share information and learn from others. There are over 400 external participants, of whom around 60-100 attend each month. Speakers and topics covered are varied and cover issues such as Indigenous financial literacy, issues affecting the most vulnerable sectors of the community, current international and Australian research work and results of programs run by various agencies. Attendees come from all over Australia and New Zealand and include representatives from the community, education, financial services and government sectors.

Financial Information Service seminars

Last year ASIC offered an investor education program, *'Investing Between the Flags'*, in partnership with the Dept of Human Services' Centrelink Financial Information Service officers. *'Investing Between the Flags'* is targeted at beginner investors and covers the basics of how to invest (risk and return, diversification, asset allocation), as well as how to manage investing risk in a way that suits an individual's risk tolerance and investment goals. Program resources include web content on MoneySmart, a print booklet and a 90-minute face-to-face seminar. We are hoping to repeat this seminar program this or next year.

Australian Defence Force

ASIC has formally partnered via a Memorandum of Understanding with the Australian Defence Force Financial Services Consumer Council. Through this partnership ASIC has helped develop a range of financial literacy resources in print and online. ASIC's Chairman also writes a monthly article in the service newspapers where he provides financial guidance and money tips for ADF members.

c. How does ASIC target the educational assistance it provides to Australian consumers and investors?

Response

This question can be read two ways – either how we identify what issues to target, or what sorts of channels we use for our education work. We respond to both aspects below.

ASIC uses a range of information and research to identify what issues to target in our educational assistance, for example:

- research and intel gathered through the face to face liaison work done by ASIC's Credit Outreach team and Indigenous Outreach team;
- intel gathered by ASIC's Infoline and call centre staff;
- complaints gathered through ASIC's Misconduct and Breach Reporting area;
- feedback gathered from users of its MoneySmart website, through the 'feedback' button on every page of the site;
- commissioned market research about the MoneySmart website;
- the input of ASIC's Consumer Advisory Panel, which helps us identify the issues causing real problems for consumers and investors, including vulnerable consumers who may not contact us;

- industry intelligence received through our regular industry liaison work;
- the results of the regular ANZ surveys on Adult Financial Literacy in Australia and other externally available research sources; and
- regular systematic input, via both written reports and quarterly meetings, from both external dispute resolution (EDR) schemes, Financial Ombudsman Service and Credit Ombudsman Service Limited, about issues that consumers are complaining to those schemes about. This input highlights both systemic issues that may affect an industry sector and/or issues affecting a specific licensee; and comprises both quantitative reports about numbers of complaints received by EDR schemes, and qualitative commentary about issues encountered.

ASIC also uses a range of targeted channels for our education work, to ensure that we communicate with each audience sector using the channel that best suits them, for example:

- for older Australians we ensure that we provide print publications on topics they have most interest in, such as retirement, superannuation and particular products such as reverse mortgages;
- for our culturally and linguistically diverse (CALD) audience, we use radio segments on ethnic and community radio;
- for consumers who consult intermediaries such as financial counsellors, legal aid centres, Centrelink or settlement workers, we provide print publications that these intermediaries can give their clients on issues most relevant to them, such as credit, debt and basic money management; and
- for users of social media, we promote our MoneySmart messages on Twitter, Facebook and YouTube, as mentioned earlier.

The MoneySmart site will only be effective in improving people's financial wellbeing if people use it; so we use a range of strategies to bring it to their attention. For example we actively encourage other organizations to link to our site, and about 28% of our traffic comes from those referring sites. We also we work hard to get MoneySmart listed as high as possible in search engines such as Google, since this is how most people search for information; and we estimate that 44% of our traffic comes from unpaid listings.

Finally we have a complementary strategy, in cases where our ad is not prominent in unpaid searches, to run targeted ads about specific topics via Google Adwords to bring relevant content to the attention of consumers seeking that information. About 11% of MoneySmart traffic comes from Google Adwords. We do this because for some topics MoneySmart will not be prominent in organic searches, and it is important to provide people with independent guidance and help on those topics. For example, a search for 'how

to get rich quick' will swamp people with moneymaking schemes and potential scams; so we want to ensure MoneySmart is also among the search results. Similarly, a search for 'credit problems' will lead people to, among other things, commercial debt consolidation services; so we want to ensure they also receive MoneySmart information on how to manage debt.

d. The committee notes ASIC's recent launch of multilingual financial resources. What has been the response to these resources?

Response

The response to ASIC's multilingual financial resources has been very positive. Throughout March 2012, 12 training sessions were delivered to 330 community settlement workers nationally about how to use these resources with their clients. The workers who attended will go on to train their colleagues, so more than 600 workers in total will know how to use the resources. Community settlement workers will use our resources with almost 14,000 newly arrived humanitarian entrants every year and many more will be educated through the Settlement Grants Program every year.

Comments made by community settlement workers about the resources include:

- "This information is perfectly suited to newly arrived people as it has been written in a way that is easy to understand and on topics that are extremely relevant to them".
- "I wish these resources existed earlier".
- "This is the best resource I've seen about money management".
- "This is such a comprehensive resource that would be beneficial for all Australians".

A formal evaluation is currently being undertaken which will take account of additional feedback from community settlement workers who have used the resources with clients.

The *Department of Immigration and Citizenship* is looking to make further use of ASIC's resources in their Detention and Community Detention programs; and the *Adult Migrant English Program* and *Language, Literacy and Numeracy Program* teachers have expressed a wish to use the resources in their current teaching programs which reach thousands of students nationally each year. Workers who deliver the *Australian Cultural Orientation (AUSCO) program* overseas to refugee and humanitarian visa holders preparing to settle in Australia have also chosen to use our resources in their program.

Our multilingual community settlement workers kit is also available on the MoneySmart website, allowing many more people to access it Since early March when the resources were launched, there have been over 1400 visits to the "other

languages" page of MoneySmart, and over 1200 visits to the Money Management Kit on MoneySmart.

e. What activities is ASIC undertaking to educate trustees of self-managed superannuation funds?

Response

ASIC works with the ATO in a number of ways to educate trustees of self-managed super funds.

For example, the ATO and ASIC produced a fact sheet *Is self-managed super right for you?* with key questions to ask if considering starting an SMSF. The questions cover important issues such as whether the fund is strictly for retirement benefits only, whether the person considering an SMSF has the requisite time and skills, whether the benefits will be worth the costs, and how switching to a self managed fund will affect any current super. The fact sheet is available at http://www.ato.gov.au/content/downloads/n13556-05-2005_w.pdf and the media release at http://www.asic.gov.au/asic/asic.nsf/byheadline/05-133+Four+key+questions+about+self+managed+super+funds?openDocument.

ASIC and ATO also have a joint publication *Thinking about self-managed super*, which can be downloaded from both MoneySmart and the ATO website at:
https://www.moneysmart.gov.au/superannuation-and-retirement/self-managed-super
http://www.ato.gov.au/superfunds/content.aspx?doc=/content/00182491.htm

There are three other related ATO publications that SMSF trustees can access from MoneySmart which provide SMSF trustees with essential information on SMSFs, namely:

- *Setting up a self-managed super fund*
- *Running a self-managed super fund*
- *Winding up a self-managed super fund.*

The MoneySmart website also has online content with links to other organisations (including the ATO and the Self Managed Super Funds Professionals' Association of Australia); see:
https://www.moneysmart.gov.au/superannuation-and-retirement/self-managed-super

ASIC also contributes regular articles to the ATO's e-newsletter for SMSF trustees, *SMSF News*. ASIC's articles focus on a variety of topics including investing within SMSFs. Recent contributions have been about the risks of overseas property investing, fixed interest, exchange traded funds, the risks of hybrid securities and protecting yourself against online trading scams

f. In its November 2011 ASIC oversight report the committee recommended that ASIC obtain empirical evidence of the resources allocated to its educative

activities and the outcomes of these activities. What is ASIC's response to this recommendation?

Response

ASIC engages in a broad range of educational and financial literacy activities which have, since we were given responsibility for financial literacy at Commonwealth level, increasingly become part of our business as usual; and the work that contributes to financial literacy is integrated into the activities of various teams. Where possible we record the allocation of resources to each activity, however not all our education activities are discrete, have separate budgets or can be related to quantitatively measurable outcomes.

Examples of the larger blocks of work are the MoneySmart website, consumer publications, the credit outreach team and the MoneySmart schools program. Progress and outcomes of this work are set out in the responses to the questions above. Some of these are funded by discrete budget allocation – for example the *Helping Our Kids Understand Finances* initiative. Other education work is undertaken or contributed to by staff in numerous teams across ASIC and its resourcing cannot be readily isolated.

Our outcome measures for education work are both qualitative and quantitative. Examples of current MoneySmart outcome measures include:

- Surveys of internet users - awareness of MoneySmart, number of people using the site, demographics, whether they found it useful, whether they took action to improve their finances as a result;
- Analytics of traffic on MoneySmart website – number of visitors, most popular pages, feedback;
- Publications – number of publications distributed; and
- Advertising for MoneySmart – impact on traffic to MoneySmart website.

The *Helping Our Kids Understand Finances (HOKUF)* initiative also incorporates systematic testing and evaluation of key components of the work. For example the units of work developed for the indigenous Milba Djunga ('Smart Money') website were extensively trialled and evaluated; and drafts of the primary level professional learning package are currently being reviewed by a reference group of representatives from all education jurisdictions and other key stakeholders. We will also measure the number of teachers receiving professional training and the number of schools participating in the pilot MoneySmart schools program. ASIC will regularly publish relevant information about its educational activities and their outcomes on www.financialliteracy.gov.au.

Finally, ASIC is also supporting the international PISA (Programme for International Student Assessment) Financial Literacy Assessment, which will establish a first international benchmark of the level of financial literacy and financial behaviours of students when they finish the compulsory Australian school curriculum.

The inclusion of consumer and financial literacy in PISA 2012 and PISA 2015 will provide data and analytical tools to assess gaps and needs in consumer and financial literacy and evaluate the efficiency of educational initiatives in this area in Australia. This data in turn will contribute to informing an evidence-based approach for policy development and allow for international comparisons on consumer and financial literacy levels and financial behaviours of young people.