

Parliamentary Joint Committee on Law Enforcement

Inquiry into Financial Related Crime

ANSWERS TO QUESTIONS ON NOTICE

20 February 2015

Topic: ASIC Investigations/ Inquiries

Hansard Page: Written, 9 September 2014

Questions on Notice – ASIC

1. ASIC has submitted that its inability to receive or intercept telecommunications information 'seriously hinders ASIC's ability to enforce the law in a modern corporate world' (see: *ASIC Submission*, p.12). Has ASIC made representations to the Attorney-General's Department with respect to its inclusion as an interception agency for the purposes of the *Telecommunications (Interception and Access) Act 1979*?

2. The National Financial Services Federation was critical of ASIC's reaction to reports of a scam, that misused the Australian Financial Services Licence information of a member (See: *Committee Hansard*, 9 September 2014, pp 23–24.) Could ASIC provide for the committee with details of any procedures or processes ASIC uses when dealing with a situation of the sort detailed by the National Financial Services Federation?

3. How does ASIC respond to this specific criticism? (See: *Committee Hansard*, 9 September 2014, pp 23–24.) Could ASIC provide the committee with details regarding the process used for investigating the incident described by the National Financial Services Federation?

4. What consultation/communication does ASIC undertake with organisations like the National Financial Services Federation in relation to scams and other financial related crime?

5. How does ASIC respond to suggestions that 'AUSTRAC could be better represented by participating directly on the Australian Crime Commission Board?' (see: *Committee Hansard*, 10 September 2014, p. 7)

ANSWERS

1. *ASIC has submitted that its inability to receive or intercept telecommunications information 'seriously hinders ASIC's ability to enforce the law in a modern corporate world' (see: ASIC Submission, p.12). Has ASIC made representations to the Attorney-General's Department with respect to its inclusion as an interception agency for the purposes of the Telecommunications (Interception and Access) Act 1979?*

Since May 2009, ASIC has made a number of representations to the Attorney-General's Department and/or the prevailing Attorney-General seeking reforms to enable it to access intercepted telecommunications information for the purpose of investigating and prosecuting relevant criminal offences, either by making ASIC an "interception agency" itself or authorising ASIC to receive and use such information lawfully obtained by other interception agencies. ASIC has most recently been informed that its requests for reform will be considered in the future by the Attorney-General's Department as part of a broader review of the

Parliamentary Joint Committee on Law Enforcement

Inquiry into Financial Related Crime

ANSWERS TO QUESTIONS ON NOTICE

20 February 2015

Telecommunications (Interception and Access) Act 1979 (Cth).

2. *The National Financial Services Federation was critical of ASIC's reaction to reports of a scam, that misused the Australian Financial Services Licence information of a member (See: Committee Hansard, 9 September 2014, pp 23–24.) Could ASIC provide for the committee with details of any procedures or processes ASIC uses when dealing with a situation of the sort detailed by the National Financial Services Federation?*

ASIC takes all advance fee loan scams seriously and acknowledges the impact on consumers. We appreciate receiving reports of misconduct about such scams, which ASIC will assess in accordance with our established process for assessing reports of misconduct.

ASIC assesses all reports of alleged misconduct lodged with us to determine whether the concerns raised suggests breaches of the law we administer, and whether ASIC should take further action in response to any identified breaches. Further details of how ASIC deals with reports of misconduct are set out in Information Sheet 153 *How ASIC deals with reports of misconduct*.

ASIC encourages members of the public to lodge reports of misconduct via ASIC's website for a number of reasons. ASIC receives approximately ten thousand reports of misconduct annually. The lodgment of reports of misconduct via our website allows us to categorise these complaints efficiently so that ASIC can consider and assess each report of misconduct.

Additionally, lodgment via our online system provides ASIC staff the opportunity to speak with a reporter and understand the reporter's concerns in further detail. After a report of misconduct is lodged via our system, ASIC staff will telephone the misconduct reporter to confirm the reporter's main concerns and also discuss further material or documents which the reporter may provide to support their concerns. This provides us the opportunity to ensure we understand the concerns that each reporter is raising and that we obtain information that is most relevant to the concerns raised.

Regarding reports of misconduct about scams, ASIC's main aim is to disrupt scammers and seek to minimise the impact on consumers. We do this by warning consumers about these operations on our MoneySmart website, which contains useful tips to assist consumers protect themselves against these types of scams. In appropriate circumstances, ASIC has also taken action by requesting the ISP or domain name host to exercise their rights under their terms of service agreement with the web client in circumstances where the web client appears to be using the internet site to commit crime. Generally, this is only possible when the host is in Australia.

Unfortunately, many scams are operated from overseas which limits ASIC's ability to take action. In circumstances when consumers have transferred money to overseas bank accounts, ASIC is often unable to get the money back. Even where the accounts are held in Australia, the funds are often withdrawn or dispersed overseas in a manner which makes recovery difficult. In these circumstances, where the available information suggests that the scam is operating from overseas ASIC's response is often limited to issuing a public warning.

Parliamentary Joint Committee on Law Enforcement

Inquiry into Financial Related Crime

ANSWERS TO QUESTIONS ON NOTICE

20 February 2015

This is why ASIC encourages people not to transfer money upfront to Australian or overseas bank accounts. Legitimate credit providers will not ask for an upfront payment before lending money to people.

We encourage people to check the details of any business they deal with on ASIC's website and to only use licensed credit providers.

ASIC has a MMOU with the AFP and several state police services and has regular liaison with the AFP and state police. ASIC proactively shares information with the police. Where appropriate, ASIC conducts joint investigations with the police. ASIC has staff seconded to the Australian Federal Police Fraud and Anti-corruption Centre to provide the AFP with expertise of ASIC's regulatory functions as well as facilitate information exchange between ASIC and AFP on FAC Centre matters. Where ASIC investigations require, ASIC is able to call upon the expertise of the various police agencies to assist, for example in the execution of search warrants.

We note that the National Financial Services Federation (NFSF), on behalf of its members raised the following concerns with ASIC about a scam involving the misuse of information of companies registered with and entities licensed by ASIC.

From its assessment of the NFSF concerns, ASIC understands the following:

- The scam was for an advance fee loan provided by scammers posing as a number of different ACL holders.
- The subjects, including some suspected to be operating from India, were using the ACN numbers, ABN numbers and registered office and/or principal place of business address details of ACL holders. In some cases, the scammers appear to have hacked into legitimate Australian ACL holder websites to perpetrate the scam.
- The scammers invited loan applications via several websites and sent "spam" emails to consumers offering loans from web based email accounts.
- Consumers who took up the loan would be approved and offered a "loan", but were requested to transfer up-front fees before the "loan monies" are advanced for reasons such as "insurance" or "taxes". It appears that the scammers are using other victims banks accounts to receive the loan advances and then having those consumers forward the funds to India via Western Union as unwitting accomplices.
- Any phone contact with the scammers was made using skype and the skype provider is located overseas and does not have the subscriber details for the numbers.

Parliamentary Joint Committee on Law Enforcement

Inquiry into Financial Related Crime

ANSWERS TO QUESTIONS ON NOTICE

20 February 2015

3. How does ASIC respond to this specific criticism? (See: Committee Hansard, 9 September 2014, pp 23–24.) Could ASIC provide the committee with details regarding the process used for investigating the incident described by the National Financial Services Federation?

As set out in our response to question 2, ASIC has an established process for assessing all reports of misconduct we receive. ASIC appreciates receiving information from members of the public about scams as a source of intelligence.

ASIC assessed the NFSF's report of misconduct in line with our policies and procedures for assessing reports of misconduct. We assessed the information provided, conducted our own confidential inquiries and liaised with a number of ASIC specialist teams to consider the matter.

ASIC received a number of reports of misconduct regarding the concerns of the NFSF, including from the public in October and November 2013. This information included a consumer who had been contacted by the scammers in July 2013. As a part of its assessment of the matter, ASIC staff had discussions in late 2013 and early 2014 with parties who had raised their concerns with us. During one of those discussions, a member of the public was informed that our inquiries and analysis to that stage indicated that the conduct may have commenced occurring some six months previously. However, it must be stressed, ASIC was not aware of the scam at that time. By the time we had these discussions, ASIC's consideration of the matter was advanced and on 10 March 2014, ASIC released Media Release 14-040MR *ASIC warns Australian borrowers about overseas lending scam* to alert consumers.

On the information available to us (outlined in question 2) and in line with our approach to disrupt scams and protect consumers, ASIC determined that the most appropriate regulatory response in the circumstances was to issue a media release to educate members of the public and to disrupt the scam. Following this, ASIC published *14-040MR ASIC warns Australian borrowers about overseas lending scam* on 10 March 2014 which was in fact about 137 days after ASIC first became aware of the issue.

ASIC had previously made a media release which related to a scam of a similar nature in August 2013. Mike Morgan Loans was promoted in Australia on a website hosted in South Africa. The website offered consumers low interest loans and falsely represented that Mike Morgan Loans was a licensed credit provider, when it was not and that a licensed Australian company was trading as Mike Morgan Loans, when it was not.

4. What consultation/communication does ASIC undertake with organisations like the National Financial Services Federation in relation to scams and other financial related crime?

ASIC liaises with the National Financial Services Federation regularly via email and telephone conferences. We also attend face to face meetings several times a year and often provide speakers to their annual conference or training days. ASIC advises the Federation of project

Parliamentary Joint Committee on Law Enforcement

Inquiry into Financial Related Crime

ANSWERS TO QUESTIONS ON NOTICE

20 February 2015

work that is of interest to its membership and provides feedback on the outcome of any projects so as to ensure the Federation is aware of ASIC work and our expectations.

5. How does ASIC respond to suggestions that 'AUSTRAC could be better represented by participating directly on the Australian Crime Commission Board?' (see: Committee Hansard, 10 September 2014, p. 7)

ASIC is an original member of the Australian Crime Commission (ACC) Board. Since the Board's creation over 10 years ago, the nature of serious and organised crime has changed, in that it has become more sophisticated. Added to this is the increasing threat of terrorist financing which has seen the role of agencies such as AUSTRAC be required to evolve and become more actively involved in law enforcement intelligence operations. As a Board member, the ASIC Chairman was, along with the other Board members, asked to consider the staged inclusion of AUSTRAC on the Board of the ACC. In early 2015, the Chairman supported the resolution to seek the approval of the Inter-Governmental Committee - ACC to begin the process of admitting the AUSTRAC CEO to the ACC Board and agreed to allow the AUSTRAC CEO to attend as a non-voting observer, until such time as the Australian Crime Commission Act 2002 can be amended to include AUSTRAC as a member of the Board.