



ASIC
Australian Securities &
Investments Commission

Committee	Senate Economic References Committee
Inquiry	Inquiry into improving consumer expert choice, outcomes in Australia's retirement system
Question No.	002
Topic	Mediation
Reference	Spoken, 20 February 2025, Hansard page 3
Committee member	Senator BRAGG

Question:

Ms Constant: To pick up on the suggestion of silence or not being heard, it's not my professional view—and I don't think it would be anyone in ASIC's professional view—that ASIC has been anything like silent on the concept of member services, including in particular the payment processing treatment of claimants and treatment of members with regard to death benefits....

CHAIR: Just finally, the point I'm trying to make here is it is very important to have deterrence. There has been a lot of bad stuff happen here, so I'd ask you to take on notice any internal judgements or paperwork that you generated which weighs up of the risk of going to mediation in a case like Cbus, rather than allowing all the detail to be exposed in a public courtroom. These are matters of great public interest, and I think it would be an absolute disgrace if these things were to be covered up and pushed under the rug. So I'll get you to take on notice any internal deliberation or any judgements that you've made about the risks of further bad behaviour if this is allowed to go through into mediation and therefore the detail doesn't come out in the courtroom of these horrendous cases where people have had to, at the worst time in their lives, fight to get their own death benefit from a loved family member.

Ms Constant: We'll take the specific question on notice.

Answer:

It is commonplace for the Court to order the parties to civil law enforcement proceedings commenced by ASIC and other regulators to participate in a mediation, as has occurred in the case of Cbus. The Court may order mediation at the request of one or both parties, or on its own initiative.

ASIC's decision whether to agree to a mediation is made having regard to its obligation to act consistently with the overarching purpose, as stated in the Federal Court Act, to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible. ASIC also has obligations under the Public Governance, Performance and Accountability Act 2013 and the Legal Service Directions 2017 to responsibly use public funds and conduct litigation honestly, fairly and promptly under the model litigant obligations.

In the event an in-principle agreement is reached between the parties at mediation on any aspect of a case, the matter will proceed to a public hearing where the agreement will be disclosed in a transparent manner to the Court which will then receive evidence and make open findings on whether there have been contraventions of the law and the appropriate penalty to impose. The Court is not bound to determine the matter in accordance with any agreement that might be reached between the parties at mediation.