

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Securities and Investment Commission

Question No: 169

Topic: Debt Vultures

Reference: Written

Senator: Ketter, Chris

Question:

1. What work is ASIC doing in relation to so-called 'debt vultures' – that is, firms whose business models rest on furnishing consumers with unhelpful debt products. Examples of these firms can include
 - a. 'Credit washing' companies;
 - b. Debt consolidation firms that cold-contact debtors based on court default documents; often this is to offer to negotiate with a mortgagee on the debtor's behalf – for a considerable fee;
 - c. Debt collection or consolidation firms that encourage debtors to apply for early release of superannuation where this is not in the best interests of the debtor.
2. What communication has ASIC had with the ACCC in relation to this issue?
3. Some stakeholders have suggested that the rise of debt-vulture firms has corresponded with the reduction in funding for financial counsellors. Has ASIC made an assessment of this?
4. What plans does ASIC have to improve licensing and regulation arrangements for debt vultures in the interests of consumers?

Answer:

1. ASIC understands the question to be about the types of businesses ASIC categorises as 'debt management firms'. They typically promise to help consumers in relation to; developing and managing budgets; negotiating with creditors, arranging formal debt agreements under Pt IX of the *Bankruptcy Act 1966* (Bankruptcy Act); and 'cleaning' or 'fixing' default listings on credit reports.

Where ASIC becomes aware of a debt management firm that is in breach of the laws that ASIC administers, ASIC will take compliance or enforcement action in response.

ASIC is currently working on a number of matters relating to such firms. These matters relate to false or misleading representations in respect of credit repair services (i.e. 'credit washing') and services in relation to the promotion to consumers of Part IX arrangements under the Bankruptcy Act. These matters are not yet public.

ASIC has also obtained a number of negotiated outcomes that have resulted in firms improving the advertising of their services to reduce the risk of consumers being misled.

This work has been undertaken based on the limited regulatory powers that ASIC has in respect of debt management firms; please refer to part 4, below.

In addition, in January 2016 ASIC issued Report 465, *Paying to get out of debt or clear your record: The promise of debt management firms* (REP 465) that discussed the concerns with the growth of this sector.

2. ASIC has regular contact with ACCC in relation to this issue, including regularly discussing the issue at quarterly liaison meetings between ASIC and ACCC.

ASIC and ACCC have given delegations under which the agencies are able to exercise the other agency's relevant legislative power. These arrangements require ASIC and ACCC to engage with each other in respect of action undertaken using the delegations.

3. 3. ASIC has not made an assessment of this.
4. There is no uniform regulatory regime that applies to debt management firms. Some misconduct by debt management firms will contravene provisions under the Australian Consumer Law – for example, those relating to misleading and deceptive or unconscionable conduct.

The activities of debt management firms generally do not require them to hold a licence under the National Consumer Credit Protection Act 2009 or the Corporations Act 2001. As such, they are not subject to the various disclosure or conduct provisions that apply under these Acts. ASIC has no power to vary the regulatory arrangements for these firms.

The Policy and Research Committee of the Consumer Affairs Australia New Zealand (CAANZ) group has established a working group to look at issues relating to debt management firms. The working group is comprised of representatives from ASIC, Treasury, the ACCC, and the State and Territory Consumer Affairs agencies. ASIC is providing input to the working group about the regulatory landscape for debt management firms, and possible limitations in the laws that ASIC administers as they relate to those debt management firms.