

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

29 May – 31 May 2012

Question: BET 277-279

Topic: Infringement Notice Regime

Hansard Page: Written

Senator BOYCE asked:

In 2003-04, former Treasurer, Peter Costello proposed that infringement notices by the Australian Securities and Investment Commission for alleged breaches of disclosure be incorporated into the *Corporations Act* to tackle compliance.

He promised there would be a review of the regime in two to three years time.

It has been reported that there has been a review which has not been made public.

277. Would you please confirm whether or not there has been a review into the infringement notice regime by the Australian Securities and Investment Commission for breaches of continuous disclosure under the *Corporations Act 2001*.

278. If so, when will the review be made public?

279. When the regime was introduced, it was done on the basis that infringement notices would be a fast remedy and yet on average, it takes ASIC approximately 250 days from the time of an alleged contravention to the issuance of an infringement notice.

What steps is the department taking so the process from alleged contravention to issuance of an infringement notice occurs in a more timely fashion?

Answer:

277. ASIC has not undertaken a detailed review of the Continuous Disclosure Infringement Notice Regime established under the *Corporations Act 2001*, since its commencement.

278. See the answer to 277.

279. ASIC believes that Infringement Notices are a relatively timely and cost effective sanction for continuous disclosure breaches, in comparison with the alternative remedies ASIC has at its disposal which are civil and criminal court proceedings. ASIC has issued ten infringement notices in the last three years (three in March 2012 to Leightons). In 2004, when the new regime was introduced, ASIC issued Regulatory Guide 73 *Continuous disclosure obligations: Infringement notices* (RG 73) that stated ASIC would generally aim to issue notices within three months of identifying the breach. That has not proved possible. ASIC will not issue notices before it has ascertained the facts and concluded that there has been an actionable breach. In June this year ASIC amended the guide to remove that aspiration, however our Enforcement teams try to ensure that the time taken to identify and be in a position to prove the breach is minimised.