

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

29 May – 31 May 2012

Question: BET 66

Topic: ASIC Investigations – Number of Cases

Hansard Page: Tuesday 29 May 2012, page 96

Senator BUSHBY asked:

Senator BUSHBY: Moving on from that, but on the same issue, can you please advise the number of cases or requests for ASIC investigation that are pending action and the length of time taken by ASIC to initiate action on such matters? I am happy for you to take that on notice.

Mr Medcraft: I will take it on notice.

Senator BUSHBY: Can you advise the number of requests from Australian companies for intervention or investigation by ASIC in the past 12 months and the number of investigations undertaken by ASIC in response?

Mr Medcraft: We will come back to you on that.

Senator BUSHBY: That will do me for that one.

Answer:

ASIC receives few "formal" requests to investigate, but does receive many reports, tip-offs, questions and concerns about alleged misconduct from various sources (reports of misconduct).

ASIC also receives reports required to be lodged by external administrators under ss 433, 438B and 533 of the *Corporations Act 2001* which may generate requests from ASIC for more detailed information (supplementary reports) and notifications from auditors and self-reports from financial services licensees (breach reports).

ASIC assesses these reports in accordance with its recently released Information sheet 151: *ASIC's guide to enforcement* to determine whether to commence an investigation.

ASIC does not record whether reports of misconduct specifically request an investigation. Indeed it is not common for a person reporting misconduct to ASIC to make a "formal" request.

At any one time ASIC's Misconduct & Breach Reporting Team is assessing approximately 1000 reports of misconduct, 100 supplementary reports and 50 breach reports.

ASIC endeavours to make a decision as to whether these matters should be referred to a stakeholder team for further inquiry or investigation within 28 days.

Where a report of misconduct provided to ASIC is referred directly to a deterrence team, on average this takes approximately 60 days from the time the matter is reported to ASIC.

In the 2010/2011¹ financial year ASIC dealt with 15,634 reports of misconduct of which 28% were referred to other stakeholder teams for compliance investigation or surveillance in an average of 35 days. In that year ASIC also dealt with 743 supplementary reports (33% referred, average 63 days) and 1304 breach reports (32% referred, average 16 days).

¹ Source, ASIC Annual Report 2010-11, pp 47-49.

The 2011/2012 data is not yet available and will be published in ASIC's 2011-12 Annual Report

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ASIC is empowered under ss 13 and 15 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), to make such investigation as it sees fit into matters within its jurisdiction.

Only the Minister, under s14 of the ASIC Act, can direct ASIC to investigate a matter where the Minister believes it to be in the public interest. ASIC has no current investigations as a result of Ministerial direction.

Even though ASIC may not commence a formal investigation or utilise its compulsory powers pursuant to the ASIC Act, ASIC gives every matter raised or reported to it an initial assessment, which includes checking antecedents and other information sources available to ASIC to better consider the nature of the misconduct reported to it.

In the 2010/2011 year, ASIC's major deterrence teams finalised 184 investigations.²

Also, in that year, ASIC's Small Business Compliance and Deterrence team completed the following matters:

Liquidator Assistance Program:

ASIC prosecuted 425 directors for 761 offences. This is a decrease of 336 on the FY 09/10 year. However, the compliance rate was 40% which is 7% higher than last year and resulted in 225 more matters where compliance was achieved.

Director Disqualification Program:

ASIC disqualified 70 directors this year for a total of 202 years.

SME prosecutions:

ASIC referred 27 briefs of evidence to the CDPP for the following offences:

- 14 x s319 and related offences
- 6 x s206A offences
- 4 x s1308(2) offences
- 2 x 324CH offences
- 1 x 590 and 471A offences
- 1274 Non Lodgements
- Court Orders Sought 72
- Court Orders Awarded 72
- Settled Pre Court 93

The above outcomes by ASIC do not take into account the various compliance activities and surveillances conducted by ASIC's stakeholder teams as a result of the information and concerns reported to us.

² ASIC Annual Report 2010/2011