

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 1

Topic: Whistleblowers

Hansard Page: Tuesday 4 June 2013, Page 81

Senator WILLIAMS asked:

Senator WILLIAMS: I refer to an ASIC media release where you banned Ricky Gillespie for life. ASIC says, 'An ASIC investigation found during 2008 and 2009, Mr Gillespie failed to comply with financial services laws; forged clients' signatures on documents such as a direct debits' et cetera, and you banned him for life. I put to you the case of one in the media of late, Mr Nguyen. Ms Jan Braun went to ASIC and showed you the forged signatures and the transferring of accounts. When her signature was put on a paper she was actually, at one stage, in Madrid and at another stage in Fiji. She cannot be in two places at once. Yet with Mr Nguyen, you struck him out for seven years. Why was he not scrubbed out for life—running parallel to Mr Gillespie?

Mr Mullaly: In relation to Mr Gillespie, we prefer not to comment.

Senator WILLIAMS: You have got your media release on it.

Mr Mullaly: That matter is before the AAT, so it would be inappropriate for us to comment.

Senator WILLIAMS: Fair enough.

Mr Mullaly: In relation to Mr Nguyen, the AAT upheld the decision that was made by ASIC.

Senator WILLIAMS: But the point is this: when Miss Braun sat down with your staff through—and this was before you scrubbed Mr Nguyen out—and took them the forged signatures and the wrongdoing et cetera, your staff said that that evidence was not necessary with the AAT. Will reinvestigate this as far as forged signatures go? I can get them to you.

Mr Kell: In terms of the matter before the AAT, as I say, the AAT affirmed our decision.

Senator WILLIAMS: No.

Mr Kell: It is not appropriate for us to take new matters to the AAT after the initial hearing.

Senator WILLIAMS: If you scrub someone out for seven years and new information comes along, can you make a decision to revisit and perhaps give a stricter punishment?

Mr Kell: What we have achieved I have put on the public record—

Senator WILLIAMS: No, I want you to answer the question. Can you revisit it with new information?

Mr Kell: We think this is a very significant outcome for the clients of common law financial planning.

Senator WILLIAMS: Chair, I am not talking about the outcome. I am asking a question. They have scrubbed a financial planner out for seven years. If new evidence comes forward, can they revisit that? It is a simple question—yes or no.

CHAIR: Order!

Senator Thistlethwaite: They are matters that are before the Administrative Appeals Tribunal. It would be highly inappropriate for government officers to be commenting on matters—

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Senator WILLIAMS: They are not.

Senator Thistlethwaite: One of them is.

Senator WILLIAMS: One of them is. Mr Nguyen has been there. He has appealed it. The appeal was not upheld. They agreed with ASIC. I am asking, can you revisit it? It is a yes or no answer.

CHAIR: Let me give some guidance to the officer. The senator has asked a question. He is entitled to ask the question. You are obliged to respond. Once you respond, that is the end of it.

Mr Mullaly: In terms of the specific question, that is a legal issue and I would need to take that on notice and get advice.

CHAIR: Okay.

Answer:

Yes. If new evidence in relation to the conduct of a banned individual comes to light, ASIC *may* initiate a second administrative proceeding (under s920A of the *Corporations Act 2001* (**Corporations Act**)) against that individual. In practice, a decision to do so would take into account matters such as the outcome of the first proceeding, the conduct involved and the nature of the new evidence.