

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 113-114

Topic: ASIC Investigation

Hansard Page: Written, 13 June 2013

Senator WILLIAMS asked:

113. What is your procedure for dealing with whistle blowers when they present evidence of wrongdoing?

114.

- a. Why did you not act when you received a four page fax from a whistle blower which alleged wrongdoing by Commonwealth Financial Planner Don Nguyen?
- b. As ASIC did not act on the information relating to Mr. Nguyen for 16 months, how much do you estimate this inaction cost in monetary terms for those people who were victims of Mr. Nguyen?
- c. Was their clear evidence in the material provided to you by Jan Braund of signatures that were forged?
- d. What circumstances were different between the actions of Ricky Gillespie, financial planner banned permanently, and Mr. Nguyen, banned for just 7 years? Why was Mr. Nguyen banned for only seven years?
- e. Will you prepare a brief of evidence for the Director of Public Prosecutions to allow it to consider whether criminal charges should be brought against Mr. Nguyen?

Answer:

113. ASIC's assessment of misconduct reports from whistleblowers

ASIC Information Sheet 52 contains information on who is a whistleblower under the law and what kinds of protection whistleblowers may be entitled to under the Corporations Act. ASIC treats all information provided by whistleblowers, and any other reporter of misconduct, confidentially.

Whistleblowers can be an extremely valuable source of information. When we receive information from a whistleblower we carefully assess the information and in some cases may contact the whistleblower to request additional information. Our ability to take regulatory action is dependent on whether we find any evidence of wrongdoing.

We have publicly announced that we are undertaking a review of our whistleblower policy. This will have a particular focus on ensuring communication with whistleblowers is consistent and regular, allowing for the confidentiality obligations that ASIC is subject to. We will provide more information on this review in our main submission to the Senate Inquiry into the performance of ASIC.

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- a. ASIC did act on the information. Please see paragraphs 13-47 of ASIC's initial submission to the Senate inquiry: *Initial submission by ASIC on Commonwealth Financial Planning Limited and related matters*.
- b. ASIC does not have an estimate of the losses suffered by clients between October 2008 and 6 July 2009 (the date on which Mr Nguyen resigned). However, ASIC notes the following matters:

The fact that ASIC confronted Commonwealth Financial Planning Limited (CFPL) about Mr Nguyen's conduct on 4 December 2008 and got an assurance that Mr Nguyen was then being closely supervised and all of his advice pre-vetted before being provided to clients is a likely limiting factor on inappropriate advice generating losses during this period (see paragraph 28 of ASIC's initial submission to the Senate inquiry: *Initial submission by ASIC on Commonwealth Financial Planning Limited and related matters*).

The overarching aim of the ASIC-approved CFPL compensation scheme was to restore clients to the financial position they would have been in had the inappropriate elements of the advice not occurred and they had been provided with appropriate advice. ASIC required that that compensation measure be applied irrespective of when the inappropriate advice was provided.

For more information on the compensation arrangements, please see paragraphs 54-62 of ASIC's initial submission to the Senate inquiry: *Initial submission by ASIC on Commonwealth Financial Planning Limited and related matters*. Please also refer to ASIC's response to question 232.
- c. No. Please refer to ASIC's response to question 133.
- d. The Gillespie matter involved evidence of a number of forgeries that was sufficiently strong to be considered in a banning decision, which led to a longer disqualification period.
- e. We do not currently intend to prepare a brief of evidence for the Commonwealth Director of Public Prosecutions. Please refer to ASIC's response to question 133.