

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

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Department/Agency: Australian Securities and Investment Commission

Question: BET - 304 - 307

Topic: - Financial Adviser Registry

Reference: written - 15 June 2015

Senator: Dastyari, Sam

Question:

The Abbott government's new Financial Adviser Register does not include advisers who have been banned by ASIC for fraud, forgery, dishonest, misleading or deceptive conduct, or other forms of inappropriate advice.

304. What use is the adviser registry to potential employers and customers seeking important background information on advisers who have engaged in fraud, forgery, dishonest, misleading or deceptive conduct?
305. How do potential employers check someone's records with ASIC?
306. If ASIC have this information, why don't they upload it to the register?
307. The register was part of an 11th hour agreement with Clive Palmer in July 2014, in exchange for his support to water down Labor's Future of Financial Advice legislation – how supportive have banks and financial licence holders been?

Answer:

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There are two aspects to this question.

First, assuming that an adviser is on the Financial Advisers Register what bannings are recorded on that adviser's record in the register?

In short, if an adviser is on the Financial Adviser Register their record on the register will indicate whether they have ever been banned by ASIC (for whatever reason).

The Register records a range of ASIC enforcement outcomes. It records whether the adviser:

- (a) has been disqualified from managing corporations;
- (b) has been banned or disqualified under s80 or 86 of the *National Consumer Credit Protection Act 2009*;
- (c) has been banned, disqualified or suspended under Division 8 of Part 7.6 of the *Corporations Act* or s130 of the *Superannuation Industry (Supervision) Act 1993*;
- (d) has provided an undertaking under either or both s93AA of the ASIC Act or section 322 of the *National Consumer Credit Protection Act 2009*.

The adviser's record on the register will note the type of disciplinary action and the period of the disqualification or banning or enforceable undertaking).

A person may be banned or disqualified under the Corporations Act if they are convicted of fraud or if they have been involved in a contravention of a financial services law (which could include misleading or deceptive conduct or other forms of inappropriate advice). The

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reason for the banning or disqualification may be included in any media release accompanying a banning order.

Secondly, when are banned advisers actually on the Financial Advisers Register?

In short, all advisers who have provided personal advice to retail clients in relation to tier 1 products since 31 March 2015 will be on the register and the register will record any bannings of these individuals, regardless of when those bannings occurred.

The Register is a register of all persons who provide or provided personal advice to retail clients on tier 1 products since the commencement of the register on 31 March 2015. This means that there are three possible scenarios for advisers who have been banned:

- An adviser is currently authorised to provide personal advice to retail clients on tier 1 products and was banned by ASIC at any time in the past – this banning will be on the register
- An adviser has been authorised to provide personal advice to retail clients on tier 1 products since 31 March 2015 and was banned by ASIC at any time, but is no longer working (because of an ASIC ban or some other reason) – this ban will appear on the register. That is, once an adviser goes on to the register they will stay on it indefinitely. Their record will reflect whether they are currently authorised to provide financial advice to retail clients on tier 1 products and whether they have ever been banned
- An adviser has *not* been authorised to provide personal advice to retail clients on tier 1 products at any time since 31 March 2015, but was banned by ASIC at some time in the past – this person will not be on the register and so the ban will not be reflected on the register. However, the person and their banning will appear on ASIC's banned and disqualified register.

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Potential employers can search the Financial Advisers register on MoneySmart – moneysmart.gov.au using the person's name to see their record as a financial adviser. If the person is also an authorised representative, the employer can search the Authorised Representatives register on ASIC Connect.

If a person is both a financial adviser and an authorised representative, these records will be linked so that only one search is required.

Licensees should also do appropriate reference and other checks. See ASIC's website <http://asic.gov.au/regulatory-resources/financial-services/reference-checking-directory-for-financial-services-industry/>. See also ASIC Media Release 13-097. <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2013-releases/13-097mr-licensees-urged-to-review-and-improve-recruitment-of-new-advisers/>

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The information on the register was determined by the Federal Government. The Corporations legislation sets out: the parameters of the content which is on the register, which information is made publicly available and for which information a fee is payable.

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Banks and financial services licence holders have been supportive of the register initiative.