

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2016 - 2017

Department/Agency: ASIC

Question: BET 214 - 216

Topic: ASIC Enforcement

Reference: Written – 6 May 2016

Senator: Chris Ketter

Question:

214. The capability review suggests ASIC's leadership places too much emphasis on enforcement. Is ASIC going too far?
215. What do you think the victims of CommInsure would say to this assertion?
216. Given that ASIC has initiated several 'lessons learned' reviews across enforcement cases, what material improvements have been made?

Answer:

214. No. There is a clear expectation from the Government, Parliament, industry and the public that ASIC will effectively enforce the law, and will clearly and transparently communicate how it is doing so.
215. It is not clear from the question what the assertion being referred to is.
ASIC is investigating the allegations against CommInsure, as well as conducting a broader review of the life insurance industry to uncover any other systemic issues in claims handling across the sector.
216. ASIC has been undertaking lessons learned reviews of significant matters since 2010. Commencing in October 2014 lessons learned reviews are now undertaken for all matters, excluding those investigations which are finalised within 5 months of commencement. As a result of the lessons learned reviews, the following has been achieved:
 1. Introduced guidelines which focus on:
 - a. better strategic analysis of an investigation and litigation at an early stage;
 - b. better testing of cases before ASIC begins proceedings and in the lead up to trial;
 - c. better record keeping, including better record keeping in respect of the making of material decisions;
 - d. investigation scoping;
 - e. clarity and simplicity in framing of litigation;
 - f. the exercise of caution in alleging fraud or dishonesty; and
 - g. viewing, in market based cases, the impugned conduct through the lens of the market and demonstrate the impact on investors.

2. Introduced a protocol which describes how decisions are to be made in respect of investigations and litigation. It distinguishes between major matters and other matters and requires that important strategic decisions about a major matter be made by the Commission.
3. The Enforcement Committee was set up, with a standing membership of Commission, CLO and Enforcement SELs, to consider the prioritisation and resourcing of major matters and undertake strategic analysis of the direction and progress of such matters.
4. Introduced a standard referral process from surveillance.
5. Introduced a best practice investigation process for credit related matters.
6. Introduced a best practice referral process of matters to the Markets Disciplinary Panel.
7. Enhanced early engagement with CDPP on high profile and complex matters, leading to well-prepared briefs and matters being progressed quickly.
8. Increased our monitoring of enforceable undertakings, including the reporting of the outcomes.
9. Improved our process and guides on search warrants.
10. Improved our enforcement project management framework leading to improvements in our identification and management of risks and issues in our investigations.