

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 20-21 February 2008

Question: aet 71

Topic: Complaints from Consumers

Hansard Page: Written

Senator BUSHBY asked:

1. Does ASIC maintain a record of customer complaints from consumers, the industries it oversees, or other stakeholders?
2. If so, how many complaints have been received?
3. How does ASIC deal with the complaints it receives?
4. Does it publish a list of complaints received and how it has addressed these complaints?

Answer:

1. Yes. ASIC individually registers and assesses each report of misconduct received from all sources, including the general public, industry bodies, other law enforcement or government agencies and members of parliament (on behalf of constituents). All complaints made to ASIC are received in confidence and ASIC is required pursuant to section 127(1) of the *Australian Securities & Investments Commission Act 2001* to take all reasonable measures to protect unauthorised use or disclosure of the information.
2. ASIC receives and assesses approximately 11,000 reports of suspected misconduct each year. For the 2006/07 financial year, ASIC received and assessed 10,681 reports of suspected misconduct, 81% within 28 days, ahead of our 70% target.
3. ASIC reported the following outcomes for reports of suspected misconduct received in financial year 2006/07:

Resolved, mainly through getting information people needed or by getting companies or company officers to comply	39%
Referred for investigation or surveillance	21%
Identified no offences or lacked jurisdiction to act	15%
Analysed, assessed and recorded the information for use as intelligence in the future, with no further action taken on the particular complaint	25%

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Every report of suspected misconduct received by ASIC is registered, acknowledged in writing (usually within 48 hours of receipt) and assessed. ASIC's assessment process requires an analysis of whether the misconduct reported contravenes a law we regulate and what (if any) further action is recommended to be taken by ASIC. For matters falling outside our jurisdiction, ASIC will attempt to assist the complainant to resolve their concerns or direct them to the appropriate law enforcement agency or government body with the power to address their concern. Following our assessment, the complainant is contacted, preferably by telephone or at a minimum in writing, to advise the result of our inquiries, any information to assist them to resolve their concerns and what action will be taken by ASIC.

As we are often dealing with very complex laws and situations, we aim and strive to communicate to complainants in plain language and explain anything that is not understood. We continually do all we can to make complainants "complaint ready" (that is, have all the paperwork ready and a have clear understanding of what they are alleging and seeking). We do this, in part, by providing media releases, information and online tools on the main page of our website and on our dedicated consumer website, FIDO.

As ASIC cannot provide legal or financial advice we take care in explaining the boundaries in respect to our role including that we generally won't be able to recover money and in some cases the importance of obtaining professional advice in addition to lodging a complaint with us. We also take care in explaining that ASIC is neither an adjudicator nor a mediator, that we do not act for individuals but as a market place regulator.

Although it is not possible to take formal action in response to every complaint it receives, all complaints are treated very seriously and are valuable sources of intelligence for ASIC. The complaints assessment process, in addition to reviewing the information provided by a complainant, involves the making of preliminary and often detailed enquiries, including intelligence checks.

In determining what action we can take, we weigh up every complaint against four basic questions: a) what action can we take, b) is the evidence likely to be sufficient, c) how urgent and serious is the complaint and d) if we succeed will it change behaviour in the market place. We then decide to either pursue the complaint further, progress the complaint to an investigation under section 13 of the *ASIC Act 2001* or close the matter, recording the information for intelligence purposes.

4. We publish information about the volume of suspected misconduct reported and the action we have taken in our Annual Report each year. From time-to-time we will also publish data that is particular to a specific issue, for example to support a consumer warning against a particular type of misconduct. We do not publish a list of complaints, nor the names of entities or the source of a particular complaint, as this information is received in confidence. The confidential treatment of

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complaints information is important for two primary reasons. First, to protect the source of the complaint and promote increased reporting of corporate misconduct, in particular by insiders or whistleblowers (additional legislative protection will attach to whistleblower reporting). Secondly, to protect the target of a complaint from unfair public comment, due to a malicious report or an unsubstantiated or unproven allegation levelled against an individual or entity.