

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates 2012

15 – 17 February 2012

Question: AET 1234

Topic: Bankwest customers being treated unfairly

Hansard Page: 102

Senator Waters asked:

Is ASIC aware of media reports alleging that customers of Bankwest are being treated unfairly by its new owner, the Commonwealth Bank?

Mr Medcraft: Not right now, Senator. I can take that on notice.

Senator Waters: It has been claimed that the Commonwealth has unfairly done all sorts of things, including revalued assets, changed loan-to-valuation ratios and pushed customers into receivership with more than necessary haste. The claimed motive is that under an agreement at the time of the takeover the Commonwealth Bank would be compensated for customers that go into receivership by a certain date. Those are the claims. Is this a matter that ASIC would investigate?

Mr Medcraft: I will take that on notice and I will come back.

Senator Waters: You are not able to tell me if that would fit your—

Mr Medcraft: I would like to find out about whether it is something that has come to our attention.

Senator Waters: The question is: is this something that you would investigate? Are you already? Are you planning to?

Ms Gibson: We would investigate unconscionable conduct. That is within our remit. We certainly do that sort of thing.

Senator Waters: You would determine whether it fits within that—

Mr Day: May I ask, Senator: are you referring to a loan arrangement between individuals and the bank or small business and the bank? That was not quite clear.

Senator Waters: All customers.

Senator Williams: Hoteliers, developers, small businesspeople; I have a list of about 50.

Mr Medcraft: We will have a look at it and respond, on notice.

Senator Waters: Those are all the questions I have. I told you I would be quick!

Chair: You were indeed.

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#### Answer

ASIC is aware of recent media reports alleging that Bankwest customers with commercial loans have been treated unfairly since Bankwest was acquired by the Commonwealth Bank. ASIC has also received complaints directly from some Bankwest customers making similar allegations.

When assessing public allegations of misconduct, ASIC must first determine whether the allegations indicate a potential breach of the provisions of the legislation that ASIC administers. If so, ASIC will consider what regulatory action is available, and what, if any, action is appropriate. For example, a breach of one provision may give rise to a criminal offence; another may give rise to a civil penalty. Whether ASIC takes action is subject to consideration of the public interest, which often turns on whether there is evidence of systemic misconduct.

The *National Consumer Credit Protection Act 2009* (the National Credit Act) provides various protections to consumers, including specific obligations on credit providers in relation to responsible lending, pre-contractual disclosure and enforcement of credit contracts in default. The National Credit Act also provides that a Court may make changes to credit contracts on the grounds of borrower hardship, reopen unjust transactions, and review unconscionable charges. However, the National Credit Act does not apply to loans for business purposes or to loans to bodies corporate.

Treasury is considering whether the National Credit Act should be extended to small business lending as part of the ongoing credit reform process. This issue was addressed in Chapter 1 of Treasury's Green Paper on National Credit Reform, published in July 2010:

The *Australian Securities and Investments Commission Act 2001* (ASIC Act) contains provisions prohibiting unconscionable conduct. Although ASIC has made some enquiries in relation to the complaints received, no regulatory action has been taken to date. However ASIC would consider any additional information which may demonstrate any systemic misconduct that contravenes legislation administered by ASIC. It should be noted that the unconscionable conduct provisions of the ASIC Act do not attract criminal penalties. Rather, these provisions may be the subject of civil proceedings. It is understood that some of the bank's commercial clients have commenced their own legal proceedings and that others are also considering their own legal action.