

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 29, 30 & 31 May 2007

Question: bet 65 (ASIC)

Topic: Financial Institutions – Dispute Processes

Hansard Page: E102/103

Senator SHERRY asked:

I will leave the Westpoint, Fincorp and ACR issues for the time being. There are other issues to raise but I am conscious of the time, and we have got that other opportunity in the next few weeks. On the issue of dispute procedures more generally, there has been some media coverage of a number of cases involving a number of Australian banks over the last few weeks. I am not going to go to the details of the consumer. I am aware of them and in fact I am aware of more than have been given some media coverage, but certainly a specific issue related to NAB and a specific issue related to Rabobank. There are some other issues around the handling of disputes by the internal disputes processes of institutions. Has ASIC done any recent work in terms of the robustness, timeliness and efficacy of the internal disputes processes operating within financial institutions? I did ask about this, I think, last year, in November. Mr Lucy had not been aware of any work, but it just seems that part of the strength of our system is to ensure that internal disputes are dealt with timely, ethically and robustly, hopefully so they do not have to go onto the next level.

Mr Cooper—Can we take that one on notice.

Mr D’Aloisio—I am not aware of any.

Senator SHERRY—For example, has ASIC gone to any bank or insurance company? It is not an issue purely confined to banks. Every financial institution is required to have its internal disputes process to carry out any examination of the way in which they are operating. I have not seen any statistical data of individual dispute resolutions in a number of cases solved et cetera, even in the aggregate or disaggregated, but also no recent examination of the status of their operation. So could you take it on notice? It just seems to me that it would be reasonable to have, on a regular basis, a review of the operational standards of these disputes process procedures. Occasionally there might need to be a more detailed examination when there is seen to be a significant number of disputes that are not being resolved in a reasonable time frame. So could you take that on notice because I think it is an area where some work needs to be done. Ideally, disputes would be settled with both parties amicably within the internal disputes processes.

Mr D’Aloisio—We will take that on notice. We might talk to APRA as well about that.

Senator SHERRY—Yes. It would seem to me it is your space to look at.

Mr D’Aloisio—Yes, it is, but I am just thinking through getting the statistics.

Senator SHERRY—But APRA’s space has the licensing as well and there has to be an internal disputes process, but the examination of that in operational details seems to me to be ASIC’s space.

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Mr D'Aloisio—We will look at that.

Answer:

ASIC's oversight of the way in which banks and other AFS Licensees handle complaints through their internal procedures is an important and ongoing part of our broader work of driving improvements in Australian financial service licensees' compliance with their obligations as licensees.

Monitoring compliance with IDR requirements is a key part of most surveillance visits undertaken by ASIC (bearing in mind that only those licensees providing services to retail clients need to comply with this obligation). We look at IDR procedures and their effectiveness by reviewing complaints registers, how complaints were resolved and referrals to the relevant EDR schemes. ASIC has conducted over 450 licensee reviews in each of the past two years and reviews of this material are a routine part of such reviews. The identification of serious issues in IDR procedures is not a common finding of our reviews.

Licensees often address deficiencies in their IDR procedures at ASIC's request and without ASIC taking action. In a few cases ASIC has required that the changes made be reviewed by an external compliance expert. There are also some cases where we have taken action that includes a requirement to address deficiencies in IDR procedures. Examples include an enforceable undertaking with American International Assurance Company (Australia) Limited in January 2006 and a September 2003 enforceable undertaking with National Australia Financial Management Ltd, National Australia Superannuation Pty Ltd and MLC Nominees Pty Ltd.

It is important to note that ASIC has jurisdiction only in respect of licensees' IDR procedures that relate to financial products. In the case of banks, ASIC does not have jurisdiction over IDR processes relating to credit. This is because the IDR requirements are contained in the Corps Act and credit is not regulated under Chapter 7.

IDR Corporations Act requirements for financial services licensees

The Corporations Act requires that all AFS Licensees, including banks and insurance companies, have an internal dispute resolution (IDR) system that complies with standards made or approved by ASIC – ss912A(1)(g) and 912A(2)(a).

ASIC Policy Statement 165 explains how ASIC administers the dispute resolution provisions of the Act. In part, PS 165 applies the Essential Elements of IDR set out in Section 2 of the Australian Standard on Complaints handling (AS 4269-1995).¹ PS 165 also provides guidance on the application of AS 4269-1995 to the financial services industry and outlines additional matters necessary for compliant IDR procedures.

In terms of coverage, PS165 states that any IDR procedure must be able to deal with complaints made by retail clients as defined in s761G of the Act. PS165 encourages licensees to develop IDR procedures that have broader coverage consistent with the nature of their business.

¹ AS4269-1995 has recently been superseded by AS ISO 1002-2006

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Products and services not covered by the Corporations Act

As noted above, because credit products are not regulated under Chapter 7 of the Corps Act, ASIC has no jurisdiction over IDR processes covering such products.

Specifically in relation to banks, the Code of Banking Practice requires banks to have an internal process for handling disputes about all of their financial products and services, including credit related products. 13 Australian banks have adopted the Code of Banking Practice, including the 4 major banks.

Compliance with the Code is monitored by the Code Compliance Monitoring Committee. The Committee also receives and deals with complaints about breaches of the Code. In its most recent annual report to March 2007, the Committee reported that it had dealt with 7 code breaches relating to IDR out of a total of 36 code breaches.

External Dispute Resolution

It is an additional license requirement that AFS Licensees be a member of an ASIC approved External Dispute Resolution (EDR) Scheme. ASIC Policy Statement 139 explains how ASIC will approve an EDR scheme and includes a requirement for schemes to cover the majority of consumer complaints within an industry.

In relation to banks, the relevant EDR scheme is the Banking and Financial Services Ombudsman. The terms of reference allow the Ombudsman to consider complaints about a wide range of financial products and services, including credit related products. The Ombudsman's process is to look at a complaint only after the institution complained about has looked at it. In this way, the Ombudsman puts pressure on institutions to improve the standards of their IDR procedures.

PS139.62 requires that EDR schemes identify issues that are systemic or that involve serious misconduct and report such issues to ASIC. Failure to adequately deal with complaints at the IDR level are likely to result in systemic issues capable of being identified by the relevant EDR scheme, which will in turn be reported to ASIC.

ASIC also reviews the efficacy of IDR procedures when considering individual complaints made by or on behalf of consumers, or analysing complaints data provided by banks under statutory Notices in relation to particular issues. ASIC therefore monitors the effectiveness of the IDR procedures by a bank by feedback from the BFSO and through reviewing complaints.

Concerns about the provision of bank statements

The Chairman of the Parliamentary Joint Committee on Corporations and Financial Services Senator Grant Chapman has also raised with ASIC individual complaints involving the non-provision of bank statements, banks' IDR processes and related issues by letter dated 22 June 2007. ASIC's Chairman Tony D'Aloisio responded by letter dated 20 July 2007, stating that ASIC would review the complaints the Senator had provided and would, in light of our own experience and those of the Banking and Financial Services Ombudsman and the Code Compliance Monitoring Committee, further consider whether there are systemic issues in this area and would endeavour to report back within 4 months from the date of the Mr D'Aloisio's letter.

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