

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

1 June – 3 June 2010

**Question: BET 237**

**Topic: Form 201 – Application for Company Registration**

**Hansard Page: Written**

**Senator BUSHBY and EGGLESTON asked:**

**1. Why are companies required to submit the Form 201-Application for Company Registration?**

To register a company a person must lodge an application with ASIC under s117 of the Corporations Act 2001. The application must be in the prescribed form and must contain specific information, such as the proposed name, company type, member details and address details. The application is referred to as a Form 201 – Application for Registration as an Australian Company (Form 201).

Electronic lodgements account for 85% of all Form 201's. We are currently developing a new online service which will provide our customers with the ability to register an Australian company directly with us. We are also working with the New Zealand Companies Office to develop a joint company registration process. When lodging online the customer experience is not identical to completing a paper form, although equivalent information is collected.

**2. When did this requirement come into place?**

The requirement to lodge a Form 201 came into place on 1 January 1991 - under the Corporations Law (now the Corporations Act 2001). The Corporations Law replaced previous State and Territory legislation (known as the companies codes and companies acts).

**3. Did ASIC receive this information (required by Form 201-Application for Company Registration) prior to when this requirement came into effect? If so, why has ASIC not recorded this information?**

When State and Territory companies transferred to the Corporations Law (national scheme regulated by the then ASC) all available details of all registered company's were transferred to the ASC register.

**4. How has ASIC conveyed the information to small business that they are required to submit the Form 201-Application for Company Registration?**

The requirement to submit a Form 201 is widely publicised through various channels including – a link on our website, through professional advisers and professional organisations (e.g. small business council, accounting bodies, ASIC Registered Agents). Small Business can also obtain advice from our Client

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Contact Centre. Various other Government agencies refer small business to ASIC for company registration.

**5. What follow up was undertaken to ensure small business were aware of their rights and obligation regarding the lodgement of a Form 201- Application for Company Registration?**

We regularly update our website in relation to lodgement requirements. We have a specific section - 'For Companies'- which includes information on starting, running and closing a company. The starting section contains specific information in relation to lodging and completing the Form 201. Once a company is registered we send information packs to new officeholders informing them of their rights and obligations – including how to submit changes to us and we highlight key information – such as their annual review date.

**6. Did ASIC write and contact small businesses that may have mistakenly failed to provide the required information to ASIC in the mistaken belief that they had already done so?**

*This question (and the remaining questions) will be answered on the assumption that it is referring to the non capture of share and member information, which occurred in 2003.*

A company has always been required to provide share and member information on incorporation (as per s117 of the Corporations Act 2001). However prior to 1 July 2003 we did not have the facility to capture this information from the Form 201. This information was data captured via the company's annual return (Form 316).

In 2003 Government reforms (CLERP 7) abolished the requirement to lodge the Form 316 and introduced a new review process. The obligation to lodge a Form 316 ended on the 31<sup>st</sup> December 2002 and we were unable to data capture share and member information from the Form 201 until 1 July 2003. This meant that companies registered between 1 January and 30 June 2003 (of which there were 55,000) did not have share and member information data captured.

However this group of companies were given the opportunity to update their share and member information without imposition of late fees if they lodged the information in the prescribed form within 28 days from the issue of the company's first annual statement.

The missing share and member data was highlighted in 'bold' sections in their first (and subsequent) annual statements. Each annual statement clearly indicated that we had no record of this information and they needed to submit the details to us.

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**7. Outline the measures ASIC took to provide small businesses with reminders or warnings that the information that was still outstanding was required?**

As advised in our response to the previous question, where share and member information was not data captured and until it was provided, the first and subsequent annual statements issued by ASIC to the company (from July 2003) contained 'bold' sections reminding the affected company that we did not have a record of their share and member information and they needed to submit this information to us.

In 2003 the transition from annual returns to annual statements was widely published, via ASIC's website, correspondence and our Client Contact Centre. The communication campaign and transitional approach aimed to avoid penalising company officeholders while they familiarised themselves with the new legislation.

**8. Do you agree with the Commonwealth Ombudsman that “there had been administrative deficiency” regarding the handling of these matters?**

We accept the Commonwealth Ombudsman's findings.

**9. As recommended by the Commonwealth Ombudsman why has ASIC not waived the late penalty fees?**

ASIC back captured share information for 5,256 companies by 30 June 2009. The updated information now appears on the company's annual statement and the public register and any late fees that may have been incurred have been waived.

**10. Has ASIC waived any late penalty fees with regard to small businesses failing to lodge form 201-Application for Company Registration? If so, on what grounds were some cases granted late fees and others not?**

Late fees do not apply to the lodgement of the Form 201. Late fees apply to the notification of changes in company details outside of the period prescribed by the relevant legislation.

\* This question was also asked in writing by Senator Eggleston on 8/06/2010