

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Additional Estimates
2015 - 2016

Department/Agency: Australian Securities and Investment Commission
Question: AET 111-115
Topic: Land Banking
Reference: written - 17 February 2016
Senator: Dastyari, Sam

Question:

Land Banking

BACKGROUND

Mr Jamie McIntyre and 21st Century Group are the subject of both an ASIC investigation, and a Senate Economic References Committee inquiry into 'Land Banking' (the practice of selling future purchase 'options' on land that has supposedly been confirmed for future re-zoning).

McIntyre has persuaded a significant number of people to invest in high risk, speculative land acquisitions under false pretences (e.g. the nature of the risk was not disclosed and it is unlikely the land will be developed). ASIC has intervened to try to prevent more people being scammed.

Investigation

111. What resources has ASIC deployed to investigate and 'prosecute' Mr McIntyre and his companies
112. What is ASIC doing to investigate and shut down 'Land banking' schemes?
113. What powers do ASIC, or the courts, have to compensate or reimburse victims of Mr McIntyre's Land Banking schemes?
114. What powers do ASIC have to investigate and shut down promoters (or marketing agents) of high risk property investments, where risks associated with the land are not being disclosed to investors?
115. What resources have ASIC deployed monitor ongoing investment in highly speculative property investment?

Answer:

[insert response, referencing relevant question numbers above]

111. ASIC has had a number of senior and junior lawyers as well as senior and junior investigators, investigating and prosecuting various matters concerning Jamie McIntyre, his

brother Dennis McIntyre and companies associated with them. In addition, ASIC has engaged senior and junior barristers to advise on legal issues and appear at the various Court hearings of these matters. A summary of those proceedings is set out in answer 112.

112. ASIC has issued various civil proceedings in the Federal Court of Australia in the last seven months in relation to land banking developments. A summary of each follows:

- ASIC commenced proceedings against Jamie McIntyre, Dennis McIntyre and the 21st Century land banking companies in August 2015. As a result of these proceedings, the companies involved with various landbanking schemes have been wound up as a result of orders made by the court on 10 March 2016. ASIC is also seeking to disqualify Jamie and Dennis McIntyre from managing corporations.
- ASIC commenced proceedings in October 2015 in relation to a land banking development known as Hermitage Bendigo, formerly known as Acacia Banks. This land banking development had been promoted by Jamie McIntyre and the 21st Century companies. The developer for this land banking scheme was Midland Hwy Pty Ltd which was put into administration on 2 July 2015. At the second creditors' meeting of Midland Hwy held on 21 October 2015, creditors voted in favour of the Deed of Company Arrangement despite the Administrators recommending the company be put into liquidation. ASIC successfully obtained orders that the resolution be set aside and that liquidators be appointed to Midland Hwy Pty Ltd as the Court found that it was in the public interest to do so.
- ASIC also resolved proceedings in August 2015 in relation to removing the replacement administrators of Midland Hwy in circumstances where ASIC was concerned that their appointment occurred in circumstances where many investors in Hermitage Bendigo (who may also have been creditors), were not given notice of the first meeting of creditors.
- On 15 April 2016, following an application by ASIC in the Federal Court in Melbourne, the Court has appointed liquidators to two companies, Bilkurra Investments Pty Ltd and Foscari Holdings Pty Ltd, who have each operated a land banking scheme in Victoria. ASIC's application was based on concerns that both companies were insolvent. The Court agreed and also found that it was just and equitable that the companies be wound up so that liquidators could be appointed. The Court further found that:
 - Bilkurra and Foscari were knowing participants in schemes that have facilitated misappropriation of investors' funds,
 - Michael Grochowski, who was banned by ASIC from providing financial services, had the day to day control of the companies, including by controlling the companies' bank accounts which contained investor funds, and
 - the winding up orders were necessary to protect investors and so that there was some prospect of recovery of the monies lost after a full investigation by a liquidator.

- ASIC also commenced proceedings in September 2015 against Macro Realty Developments Pty Ltd (Macro), Property Tuition Pty Ltd (2^{1st} Century Property) and Education Holdings Pty Ltd (2^{1st} Century Education) who were marketing and promoting a proposed Pilbara property investment using the tagline 'Do you know how to buy Australian property, no money down?'. The proposed investment involved investors:
 - becoming a director and shareholder of a company;
 - acquiring properties from Macro through this company; and
 - receiving a director's fee but having agreed that Macro would be the sole decision maker for the company.

The Federal Court of Australia permanently restrained the conduct and in relation to 21st Century Property and 21st Century Education, declared that financial product advice had been provided in circumstances where neither entity was licensed to provide advice.

113. ASIC has powers to begin a civil action to recover damages or property for persons (including companies) who have suffered loss under section 50 of the ASIC Act and section 275 of the National Credit Act.

ASIC will consider various factors when deciding to commence proceedings, including compensation proceedings, to ensure that ASIC is directing its finite resources appropriately and that the action is in the broader public interest.

Individuals can also pursue their own actions through the courts via private litigation, including participating in class actions. ASIC understands that a number of 21st Century land banking investors have engaged legal representation for the purposes of considering whether or not there are grounds to commence a class action.

114. ASIC is able to seek injunctions to stop companies promoting or marketing an investment where it considers that it is in breach of the laws that ASIC administers.

For example, in the proceedings against Jamie McIntyre, Dennis McIntyre and the 21st Century land banking companies, ASIC obtained interim injunctions to restrain them from further promoting the schemes in circumstances where ASIC considered that the land banking developed were unregistered managed investment schemes and Jamie McIntyre, Dennis McIntyre and the 21st Century land banking companies had been carrying on a financial services business without an Australian Financial Services Licence.

ASIC also obtained interim injunctions against two 21st Century companies and Macro Realty Developments Pty Ltd (Macro) from promoting and marketing an investment using the tagline "Do you know how to buy Australian property, no money down?" (refer 15-250MR and 16-092 MR).

115. ASIC will continue to assess reports of misconduct to determine if there are any issues that warrant investigation and action. In addition, ASIC conducts regular scans across various media channels to identify advertising which may breach the laws ASIC administers. ASIC

also has information available on its MoneySmart website which is updated as required with information about new types of investments and warning signs for investors.