

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 26

Topic: Section 33 of the ASIC Act 2001

Hansard Page: E122 (01/06/2010)

Senator BUSHBY asked:

Senator BUSHBY—What about section 33—the power to compel a person to produce books or documents? How often would that be used? As often as section 19, or only once you are further through an investigation? What sort of threshold would be required before that would be employed?

Mr D’Aloisio—Again, it would depend on the investigator. We can take that on notice as well.

Senator BUSHBY—Do you have any internal policy for when the use of coercive powers should be employed?

Mr D’Aloisio—No. Not in the sense of trying to have generalisations about cases. But with the experience that our investigators and lawyers have, they would, I guess, intuitively work out how they are going to approach a particular inquiry into an investigation and so on. Through discussion and so on, they would work it out. Generally they would take a similar procedure in each case. I do not think we have it written down as such.

Senator BUSHBY—Once again, without casting any aspersions on your investigators—I am quite sure that the confidence you have in them is justified—for transparency purposes it would seem to me that there is some advantage in people knowing the terms and the circumstances that would actually lead to the use of coercive powers. Is that something that you would agree with?

Mr D’Aloisio—We will take that on and come back to you and, again, outline what we do and assess the point you are making.

Answer:

As set out in the table at **BET 25 Appendix 1**, in the period from 1 July 2007 to 17 June 2010, ASIC has used section 33 of the ASIC Act- *the power to give a person a notice to produce documents in person's possession* **more often** than section 19 of the ASIC Act- *the power to require appearance for examination*.

Section 33 of the ASIC Act has been used 6984 occasions from 1 July 2007 to 17 June 2010, whereas section 19 of the ASIC Act has been used 3354 occasions from 1 July 2007 to 17 June 2010.

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ASIC staff use coercive powers in accordance with the law in order to further ASIC's surveillances and investigations where it is considered appropriate to do so.

ASIC staff may only issue a notice under sections 30, 31 and 33 of the ASIC Act to require the production of books for a purpose set out in section 28 of the ASIC Act. Those purposes include ensuring compliance with the corporations legislation or other relevant laws of the Commonwealth or States and the purpose of a formal investigation pursuant to Division 1 of Part 3 of the ASIC Act.

The power under section 19 of the ASIC Act to require a person to appear for examination or give reasonable assistance can only be exercised where ASIC, on reasonable grounds, suspects or believes that a person can give information relevant to a matter that it is investigating or is to investigate.

Section 13 of the ASIC Act is the section pursuant to which most formal investigations are commenced by ASIC. There must have been a decision to commence a formal investigation before ASIC may exercise its powers to require a person to give ASIC all reasonable assistance in connection with its investigation, and to appear before a staff member for examination on oath and to answer questions.

ASIC's procedures require that a formal investigation pursuant to section 13 of the ASIC Act can only be commenced upon a senior staff member deciding that the legislative requirements have been met, namely that there is reason to suspect that there may have been a contravention of the relevant laws.

ENDS