

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2011-2012**

Outcome 5 - Workplace Relations & Economic Strategy

DEEWR Question No. EW0499_12

Senator Abetz provided in writing.

Question

Registered Organisations

Please provide a comparison of the powers in the Fair Work (Registered Organisations) Act and the Corporations Act.

Answer

The attached table provides a comparison of comparable powers (i.e. powers relating to the conduct of investigations into financial matters) under:

- the *Fair Work (Registered Organisations) Act 2009*; and
- the *Australian Securities and Investments Commission Act 2001*.

The *Australian Securities and Investments Commission Act 2001* has been used instead of the *Corporations Act 2001* because it contains provisions enabling the conduct of investigations that are most comparable to those contained in the *Fair Work (Registered Organisations) Act 2009*. The *Corporations Act 2001* does not include provisions relating to investigations into financial matters by the regulator.

Section	<i>Fair Work (Registered Organisations) Act 2009</i>	Section	<i>Australian Securities and Investments Commission Act 2001(ASIC Act)</i>
331	<p>General Manager may conduct investigations</p> <p>The General Manager may, if satisfied there are reasonable grounds to do so, conduct an investigation into whether:</p> <ul style="list-style-type: none"> • The accounts and audit provisions of the Act (including Regulations and guidelines made under those provisions) have been contravened; or • A rule of a reporting unit relating to its finances or financial administration has been contravened; or • A civil penalty provision has been contravened. 	<p>13 (ASIC Act)</p> <p>28-39 (ASIC Act)</p>	<p>General powers of investigation</p> <p>Section 13 of the ASIC Act provides that ASIC may investigate where it has reason to suspect that a contravention of corporations legislation has been committed or where it thinks such investigation will expedite administration of corporations legislation.</p> <p>ASIC may inspect books and audit information</p> <p>Part 3 of the ASIC Act outlines other investigation and information gathering powers.</p> <p>ASIC’s powers to inspect books and conduct audits are contained in sections 28-39 of <i>ASIC Act 2001</i>. These sections provide for powers to investigate an alleged or suspected contravention of corporations legislation or a law of the Commonwealth, a state or territory that concerns an alleged or a suspected contravention relating to the management or affairs of a company.</p>
332	<p>Investigations arising from auditor’s report</p> <p>The General Manager must, in most cases, investigate any defect or deficiency included in an auditor’s report where the General Manager is satisfied that the matter should be investigated.</p>	<p>15 (ASIC Act)</p>	<p>Investigation after report of receiver or liquidator</p> <p>If a report has been lodged under section 422 or 533 of the <i>Corporations Act 2001</i>, ASIC may investigate a matter to which the report relates for the purpose of determining whether or not a person ought to be prosecuted for an offence under that Act.</p>
333	<p>Investigation arising from request from members</p> <p>The General Manager must investigate the</p>		

	finances and financial administration of a reporting unit on request of a specified number of members.		
335	<p><i>Conduct of Investigations</i></p> <p>The General Manager may require an officer or employee of the reporting unit or an auditor for the reporting unit to:</p> <ul style="list-style-type: none"> • give information; • produce documents; • attend to answer questions. <p>Failure to comply with such a request or knowingly or recklessly providing false or misleading information is an offence (s337).</p>	19 (ASIC Act)	<p><i>Investigations and Information-Gathering</i></p> <p>ASIC may require a person who it suspects or believes to have relevant information to:</p> <ul style="list-style-type: none"> • assist ASIC in connection with the investigations; • appear before ASIC staff members to answer questions. <p>Failure to comply with a requirement under section 19 of the <i>ASIC Act 2001</i> is an offence (s 63).</p>
336	<p><i>Action following an investigation</i></p> <p>If the General Manager concludes after an investigation that a contravention has occurred, the FWA General Manager may:</p> <ul style="list-style-type: none"> • Require the union to take specific action; • Apply to the Federal Court for penalties to be imposed on the organisation (max \$11,000) or officials of an organisation (max \$2,200); or • Refer the matter to the DPP in relation to criminal offences. 	49- 50 (ASIC Act)	<p><i>Action following an investigation</i></p> <p>After an investigation ASIC may:</p> <ul style="list-style-type: none"> • refer a matter to the Commonwealth DPP for criminal prosecution; or • cause civil proceedings to commence where ASIC believes it to be in the public interest.