



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
Question No.	007
Topic	s22 ASIC Act
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Committee member	Mr Julian Hill MP

Question

Mr HILL: I have some questions on section 19 of the ASIC Act, which allows you to compel people to attend interviews. There's a further provision in the act, section 22, which allows ASIC to direct an interviewee not to discuss the questions asked or the answers given with anyone other than their lawyer. Is that a fair summation of those two provisions?

Mr Longo: That sounds fine for now.

...

Mr Day: Mr Hill, the other thing I would add to what Chair Longo said is that there are a large number of people who effectively want to get a section 19 notice. They want to be compelled to give information for a whole range of reasons—because it relates to their employer and so on. I don't think it can be equated that just because a section 19 notice has been issued to someone they're either a person of interest or may at any point become a person who's prosecuted.

Mr HILL: Yes, absolutely. I'm aware of that point, but I think it is important to have it on the record in any discussion around this. That makes perfect sense. Do you have any sense of how many people have been directed not to discuss questioning in a section 19 interview, effectively invoking section 22? Maybe that's one you can take on notice.

Mr Day: I don't know that we'll be able to answer that question, because I don't know that we keep a record of that. In a number of investigations, that would be identified or, if you like, that direction would be given nearly at the conclusion of the section 19 examination. I don't know that we keep a formal statistic about whether it has or it hasn't. I'm happy to go away and see whether we can give you that information, but I don't know whether or not we can.

Mr HILL: Okay. That's probably the heart of my interest at the moment. Maybe I am misunderstanding it, but, though I wouldn't say it's extreme, for the individual concerned that's a fairly draconian restriction to be put on them—which integrity bodies have for good reasons. It would surprise me if you didn't have some system to record the use of section 22 powers and you couldn't quantify some statistics around that. It's not just like a Tatts ticket you give them on the way out.

Mr Day: I'm a little bit surprised that you're surprised, in certain respects, Mr Hill. Obviously, in an investigation, you can't necessarily examine everybody simultaneously—at the same time. What you don't want, obviously—for practical purposes for investigative purposes, as I'm sure you'll appreciate—is effectively people telling other people what they were asked. So I don't think it's actually that unusual in that respect and I don't think in fact it's, as you say, draconian.

Mr HILL: Mr Day, I think we might have just misunderstood each other. I'm not at all surprised that you use them. I would be surprised if you didn't record statistics around their use and where they're applied and where they're not.

Mr Day: I think I'm saying what I'm saying for the practical reasons that I outlined—that it would nearly be in most cases that we might need to do so. Again, I'm sure whether or not we actually count that, if you like—as a number—so I'm happy to take that away, look at that and come back to you if that's the case.

Answer

We do not keep statistics about how often directions are given.

Inspectors at ASIC examinations are prompted to consider whether to make such a direction in preparing for an examination and ASIC understands that these directions are made in the majority of examinations.

This is consistent with ASIC's info sheet in relation to its information gathering powers (INFO 145) which states:

"The discussion that takes place in the examination is confidential and if you attend an examination you will usually be forbidden from discussing the content of the examination with anyone (other than your lawyer) for a period of time."