



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.	005
Topic	Licencing - Resourcing
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Committee member	Senator Paul Scarr

Question

Senator SCARR: There are some quotes from the spokesperson of ASIC. I'm not sure who that spokesperson was and whether or not they're here. I was looking at you, Mr Day, but I'm not sure. No, it wasn't you? Okay. I just want to read from this article. It says:

A change to allow ASIC to request information of licensees and determine whether they were still fit and proper to hold a licence was implemented in 2020 legislation passed by the Morrison government, but ASIC indicated assessment is not automatic when a licence changes owner.

Does the law actually give ASIC the power to consider whether or not an entity has ceased to be fit and proper to hold a licence, after there has been a change in control?

Mr Day: At any time, we can make an assessment of whether someone is fit and proper.

Senator SCARR: I'll read the next paragraph—and this seems to be the issue from your spokesperson:

"ASIC does not assess fit and proper persons on the change in control because the licensee does not have a statutory obligation to provide fit and proper checks for ASIC's assessment," ...

Mr Day: Correct. So the ability is there, but the requirement to provide information upon which we can base that is not there. We would have to proactively, in each case, go and ask for that and then spend the time looking at that. In terms of other things we've got at the moment—and to answer a question from Senator O'Neill I took on notice before—there are about 200 changes occurring off-market through a year.

Senator SCARR: Mr Day, is this a resourcing issue or a legal issue? From a resourcing perspective, if you had additional resources—and I understand the constraints—

Mr Day: I think the answer is that it's both, but I'd have to take it on notice and talk to my experts in the licensing team to give you a more complete answer.

Answer

Yes, it is both a legal and a resourcing issue.

The law provides that the licensee is required to notify ASIC within 30 business days after the change of control has occurred. As ASIC does not know until after control has passed, ASIC has no legal role in preventing a change in control occurring.

Once ASIC is notified of the change in control, if ASIC has concerns, ASIC could take regulatory action. Determining what, if any, regulatory action ASIC should take has resourcing implications.