

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 February 2006

Question: AT 18

Topic: *Provide copy of proposed amendments to section 49 of the ASIC Act*

Hansard Page: **E6**

Senator WONG asked:

Can you provide us with a copy of the proposed amendments?

Ms Macauley—Yes, I can.

Senator WONG—Are you taking that on notice?

Mr Lucy—Yes, we will.

Answer:

Under section 19 of the ASIC Act ASIC may compel a person to attend an examination and answer questions. Section 24 of the Act provides that ASIC may make a record of the statements made at the examination, and must do so if the examinee requests this to be done. If the record is in writing, the inspector may require the examinee to read it, or have it read to him or her, and may require the examinee to sign it.

It is proposed to amend s49 of the ASIC Act to provide that where ASIC is contemplating causing a prosecution to be begun, and has conducted a section 19 examination, ASIC may require a written statement of evidence or a written affidavit of evidence to be provided by that person. ASIC may require the examinee to give to ASIC a written statement that accurately sets out the evidence the examinee is able to give, that is signed by the examinee and capable of being admitted into evidence.

Details are:

In circumstances where:

- ASIC has conducted a s19 examination of a person (the examinee) in the context of an investigation, and
- As a result of the investigation ASIC has commenced or is commencing a prosecution, and
- Matters that were the subject of the investigation are relevant to the prosecution and
- ASIC has given the examinee a copy of the transcript of the examination,

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Then, ASIC is able to request in writing that a person give to ASIC, within a reasonable time, a written statement, signed by the examinee, admissible in the prosecution, that accurately sets out the evidence the examinee is able to give relating to matters as the subject of the examination. The written request must set out the matters that were the subject of the examination that the statement is to include, and state that is an offence to fail to comply with the request (this is standard information included with the use of ASIC's powers).

If a person refused or failed to provide a statement or affidavit, the person would be subject to section 63 of the ASIC Act (which contains penalties for non-compliance with requirements under various sections of the ASIC Act). The person could also be subject to section 70 of the ASIC Act (powers of court in cases of non-compliance), however ASIC would need to be satisfied that there was an absence of a reasonable excuse and the court would also be required to inquire into the matter.