

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 25

Topic: ASIC Coercive Powers#2

Hansard Page: E120-121 (01/06/2010)

Senator BUSHBY asked:

Senator BUSHBY—Do you keep any record of when you use the coercive powers? Is that something you would keep a—

Mr D'Aloisio—For every matter, there would be a record of what—

Senator BUSHBY—Within that file?

Mr D'Aloisio—Within that file.

Senator BUSHBY—You do not keep a separate record of the use of coercive powers?

Mr D'Aloisio—Not that I am aware of. You would not have an aggregated list of how many of those. We could do some spot testing and do some extrapolation, but really each case takes its own course and you use a range of powers.

Senator BUSHBY—And given that you do not have the record, you would not be able to provide a state-by-state basis of where you have used it.

Mr D'Aloisio—It is an interesting question. I have not thought of that.

Senator BUSHBY—Of keeping the record generally?

Mr D'Aloisio—Yes.

Senator BUSHBY—Since we are on it, I will ask you now: do you think it would be important to keep such a record? The ACCC does keep such a record of its use of its coercive records. The ACCC even has a separate report for disclosing the use of coercive powers. They are acknowledged as significant powers that are open to being abused, so it is important that the transparency is there so that people have a comfort that they are not being abused. Is that something that ASIC would consider?

Mr D'Aloisio—First of all, I will take it on board. Secondly, I think there may well be reports we do produce, because I know with the model litigant provisions and the way we work with the Attorney-General's Department we provide a lot of statistics and a lot of information. Why don't I take it on board and have a look at that and answer both what we do have and then, secondly, come back to you on the issue of whether we should extend that? In principle, what you are saying in terms of a broader record, it might be useful in some respects.

Senator BUSHBY—I think it is useful for transparency, if nothing else, and giving people the confidence that their regulators are using the powers available to them in appropriate manners.

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Answer:

ASIC does keep a separate central record of the use of most of its coercive powers and is able to provide this on a state by state basis. It does not keep a central separate record of the use of the power under section 912E of the *Corporations Act 2001* to require assistance from a financial services licensee.

A list of the powers and their frequency of use on a state by state basis for the financial years 1 July 2007 to 30 June 2008 and 1 July 2008 to 30 June 2009 and for the period 1 July 2009 to 17 June 2010 is set out in the table at **Appendix 1**.

ENDS