

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 108

Topic: Coercive powers

Hansard Page: Written

Senator Bushby asked:

- Can you outline the general approach provided to the time taken to comply by those subject to ASIC's coercive powers? For example, how would you ensure that notices requiring documents to be prepared/found/delivered etc include sufficient and reasonable time to enable the subject to comply, without placing unreasonable burdens on them or their businesses?

Answer:

ASIC's compulsory information gathering powers often include statutory requirements that ASIC act reasonably in specifying a time for compliance. For example, s87(a) of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) provides that, when a person requires the production of books under Part 3 of the ASIC Act, the time and place specified for production must be reasonable in all the circumstances.

In most cases, ASIC will be accommodating in specifying the time for production in a notice to produce. Generally, ASIC officers allow at least a week from the date of service of the notice although this will vary according to the particular circumstances. ASIC is also generally willing to accommodate requests for additional time. Documents are sometimes accepted in tranches.

On some occasions, ASIC will issue 'forthwith' notices (under s87(b) of the ASIC Act or s315(b) of the *National Consumer Credit Protection Act 2009*). These notices require production of books immediately. Forthwith notices may only be used when they are reasonable in all the circumstances. This would depend on a number of factors including the urgency of the investigation and the volume, type and location of documents.

A notice to appear for an examination must be served within a reasonable time before the date on which the recipient is required to appear to give the recipient an opportunity to seek legal advice and prepare for the examination. The amount of time that is deemed reasonable will depend upon a range of factors including the nature of the investigation. ASIC is generally willing to negotiate the time of the examination and make a reasonable effort to accommodate the wishes of the recipient subject to the needs of the investigation.