

The pick-up in economic growth may be slower than hoped amid signs the long-awaited boom in mining investment has yet to fully materialise and as Prime Minister Julia Gillard said Australia risked turning into a "patchwork economy".

A key measure of capital expenditure, which is crucial to driving

ASIC slated over 18,625 ultimatums

James Eyers

The Australian Securities and Investments Commission has come under attack after it was revealed the regulator has used its coercive, information-gathering powers 18,625 times over the past three years, raising questions about whether their use should be curbed or investigated.

ASIC's heavy use of coercive powers, an amount that averages 26 times per working day, has also stirred fears the commission is employing the powers indiscriminately, lacks the resources to properly analyse material provided, and that there is inadequate oversight of their use.

The corporate regulator can use its coercive powers to force people and companies to produce information, attend interviews, answer all questions and give all reasonable assistance. Failure to comply is a criminal offence. The powers are justified on the basis that regulators need to be able to force disclosure of material relevant to investigations to ensure compliance with the law.

Liberal senator David Bushby, who asked ASIC to produce the figures during a Senate hearing in June, was concerned by the high number revealed yesterday. He backed calls

Continued page 4

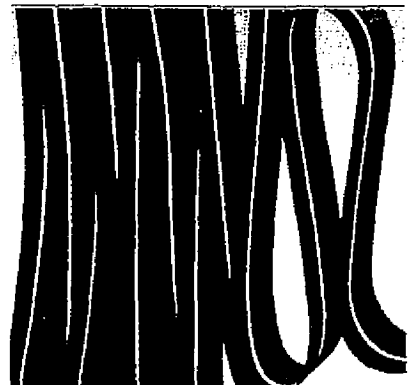
Liquidator's court hearing, page 15 ☞

Shorten and ASX rivals, page 55 ☞

INDEX
Home delivery 1800 646 990

Wor

Con



ASIC slated over 18,625 ultimatums

From page 1

made before the election for the Australian Law Reform Commission (ALRC) to investigate the use of coercive powers by regulators. "It seems to me that with 18,000 incidences of the exercise of these powers [over three years], you have to question whether ASIC has people sitting there thinking through fully the need for their use, and when the information arrives, whether it is analysed properly," Senator Bushby said.

"The high incidence suggests to me there is a lot of people sitting in ASIC thinking the easy way to do their job might be to send out one of these [notices], but it might not necessarily be for a good purpose, and the information might not be used to further the objectives of ASIC."

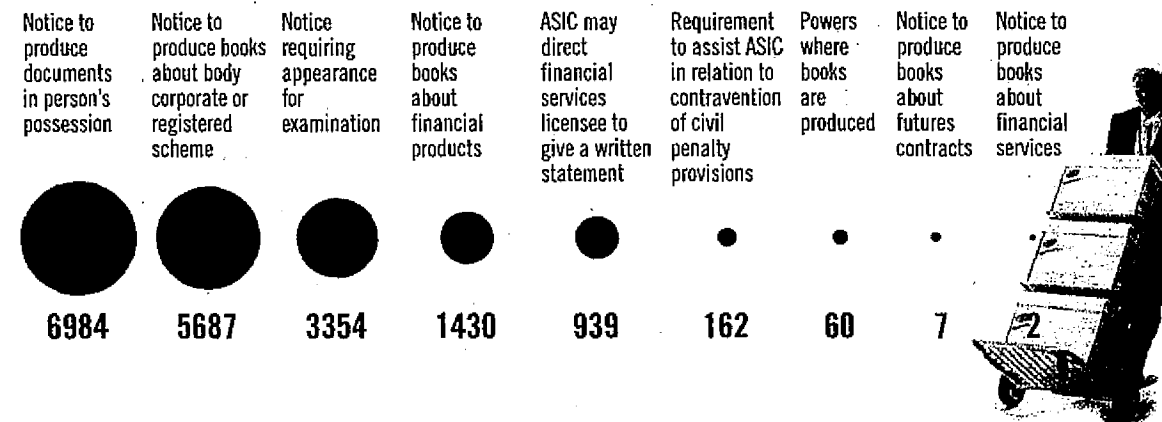
Growing concerns over ASIC's use of coercive powers follows its wider remit to investigate market rumourage. ASIC executive Greg Yanco told a stockbroker conference earlier this year that the commission would use its coercive powers to search personal records and call individual investors in for questioning when it suspected insider trading or market manipulation.

The extent of the use of the powers also follows the recent Senate report that called for ASIC to be stripped of its oversight of the insolvency industry amid concerns it is failing to properly investigate errant behaviour.

Compliance with ASIC ultimatums was also burdensome for business, said Senator Bushby, indicating he would ask ASIC further questions on the powers at the Senate's Standing

Tough regulator

Compulsory powers exercised by ASIC 2007-2010 (number of times)



Committee on Economics hearing next week. ASIC spokesman Matthew Abbott said yesterday that ASIC "has broad responsibilities and the use of these powers is part and parcel of doing the job of protecting investors and maintaining the integrity of our markets".

He said the information obtained "is used in the normal course of our work, for instance in investigations and deterrence actions".

According to the material released by the Senate yesterday, ASIC has used section 19 of the ASIC Act to require an appearance at an examination 3354 times in the past three years, with a third of the notices being issued in NSW.

On 6984 occasions over three years it has used section 33 of the ASIC Act

to require the production of documents in a person's possession, with the majority of requests coming from its NSW office. On 5687 occasions it issued a notice under section 30 of the ASIC Act requiring the production of books about a company's affairs, with the most requests coming from Victoria and Queensland.

Richard Gilbert, chief executive of the Rule of Law Institute of Australia, which has investigated the use of coercive powers by regulators, said the total number of ultimatums "prima facie, looks like an exceedingly large number, and this is only for one regulator".

"The public needs to know the extent to which regulators are empowered in Australia. Perhaps we need to look at other ways to gain co-opera-

tion from Australians. "Respect for regulation is best gotten through cooperative, not coercive, means," Mr Gilbert said. The actual use of coercive powers might be much higher: ASIC revealed in its answers to the Senate that it "does not keep a central separate record of the use of the power under section 912E of the Corporations Act to require assistance from a financial services licensee."

It is understood that ASIC may have used its powers under this section late last year to send a list of 800 questions to up to 30 of Australia's largest institutionally owned and independent dealer groups, seeking information on a range of issues but providing no information about what the information might be used for. Nor has ASIC disclosed how many

search warrants have been obtained and executed by it and the Australian Federal Police. It does not disclose the number of telephone calls intercepted, nor does it disclose how many phone records and bank account records it has obtained.

The Australian Competition and Consumer Commission, Australian Prudential Regulation Authority, Australian Crime Commission and Australian Building and Construction Commission all report on the use of their coercive powers.

The Australian Taxation Office has coercive powers but does not report on their use. Until yesterday, ASIC had not provided any information about use of its powers.

Before the election, shadow attorney-general George Brandis said that the Coalition, if elected, would ask the ALRC to examine coercive powers. Senator Bushby said it would be "highly desirable" for such an examination to take place. He said there were also alternative options to an ALRC review, including investigations by parliamentary committees.

In 2008, the Administrative Review Council highlighted the inconsistent use of coercive powers and called on senior officers within regulators to regularly monitor them.

But the government failed to respond. When the secretary of the federal Attorney-General's Department, Roger Wilkins, was asked earlier this year by Senator Guy Barnett whether the government would respond to the ARC report, Mr Wilkins said: "You are not likely to see one."

SOURCE: ASIC