

COERCIVE POWERS BEING REVIEWED

ASIC chairman Tony D'Aloisio was on the back foot in Senate estimates yesterday over the regulator's use of coercive, information-gathering powers. This followed revelations last week that ASIC has used its coercive powers 18,625 times in the past three years.

Liberal senator David Bushby told Mr D'Aloisio he supported ASIC having coercive powers but it was also important the public had confidence they were being used appropriately "and not in situations where they are not necessarily needed, particularly when they cause burdens on those that have to comply with them".

The heavy use of the powers – which force people and companies to produce information and answer all questions or face criminal penalties – has led to questions about whether they are being used arbitrarily.

Mr D'Aloisio told the committee, "We don't believe the powers have been abused. We believe the powers are needed.

"From a public interest point of view, we recognise the seriousness of this issue and the need to ensure . . . we use the powers properly and there are checks and balances in place," he said. "Our next step is to hone in more specifically on the issues of concern to business . . . and make a judgment about whether we need to introduce additional protections. We want to be perceived as a responsible regulator who is respected in the way it uses its powers."

Mr D'Aloisio said ASIC would provide the Senate with additional information about the process for issuing notices under its coercive powers. He also took on notice a question about the proportion of

requests for information that had translated into action being taken.

ASIC was conducting a "stocktake" of the powers granted to it over many years, Mr D'Aloisio said, and would discuss its procedures with staff and identify problem areas to ensure processes were adequate.

Senator Bushby pointed Mr D'Aloisio to a recent report by the Australian National Audit Office which criticised Centrelink for failing to apply the Australian Government Investigation Standards when using coercive powers.

The ANAO found that in every one of the 1.13 cases it examined, Centrelink had used coercive notices to extract information from persons inappropriately. The office also found a lack of staff training.

Mr D'Aloisio replied that if ASIC was subjected to a similar ANAO investigation, "I think we would do very well."

A bill to enhance ASIC's powers to issue search warrants – by allowing the regulator to apply for a search warrant without first having to issue a notice to produce the material – will be examined by the Senate Economics Committee at a hearing on November 3.

Senator Helen Coonan said yesterday it appeared the bill failed to include specific safeguards on the use of the new search warrant powers. In a recent submission on the bill, the Rule of Law Institute of Australia called on ASIC to publish the use of its coercive powers in its annual report and its procedures on its website. Mr D'Aloisio said he would be happy to talk to the institute about its concerns.

James Eyers