

RULE OF LAW

INSTITUTE OF AUSTRALIA

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media release

RoLIA survey of 2009-2010 annual reports for economic regulators re coercive powers

The Rule of Law Institute of Australia (RoLIA) has examined the 2009-2010 annual reports of the economic regulators recently tabled in parliament and compiled a schedule by agency and reporting item. RoLIA has considered the ACCC, ACC, APRA, ATO, ASIC and the ABCC. The ACC has not yet had its 2009-2010 report tabled. Consequently, the 2008-2009 report for ACC has been surveyed.

Agencies' coercive powers include compulsory requirement of production of documents and attendance at interview, with the ATO also having powers to enter premises without notice and impose travel restrictions. Coercive powers and the need for Parliament to be apprised of their use are of critical importance for the following reasons:

- However justified, coercive powers diminish fundamental rights and freedoms;
- Coercive powers are powers which would normally be sanctioned by an independent judiciary; and
- Coercive powers are extraordinary powers which in most cases even the police do not have access to.

Results of the survey are presented in the table below. The insertion of an 'x' in the schedule indicates that the agency in question had provided to the Parliament information on the particular reporting item:

Reporting item	ACCC	ACC	APRA	ATO	ASIC	ABCC
Number of notices	x	x				x
Notices by type (for interview or document production)	x	x				x

Notices by area of compliance (e.g project name)		x				
Challenges to the validity of notices	x	x				x
Search warrants sought by number	x					
Warrants executed/granted by number	x			x*		
Description of matters for which warrants sought	x					
Explanation of the powers and how they work		x				x
State by state breakdown						x
Breakdown by month		x				
Proceedings begun for failure to attend examination		x				x
Breakdown by type of examinee e.g. management or employees						x
Outcome of examinations (proceedings commenced, investigation closed etc).						x
Legal representation at interview						x
Explanation of why increase/decrease in number of notices		x				
Telecommunications warrants						

*The ATO disclosed its use of access-without-notice powers by stating that it used the powers on 10 occasions. The ATO is the only regulator with these powers as the other regulators must apply to Court for a warrant which is then executed by the AFP.

The only agency with specific legislative requirements for disclosure of coercive powers in annual report is the ACCC. The ACC and ABCC have more general requirements to disclose on their investigations.

The Commonwealth Ombudsman, in its February 2010 review of the ATO's use of access-without-notice powers, recommended that ATO publish data on the uses of this power which has been complied with for the first time in the ATO's 2009-2010 annual report.

The agencies can be clearly grouped by those that have significant disclosure to Parliament: ABCC, ACC and ACCC, and those that do not: ATO, ASIC and APRA.

RoLIA CEO, Richard Gilbert, concluded: 'RoLIA calls on Parliament to exercise its right and duty to know the extent of the use of the economic regulators' powers, either by requiring disclosure in annual reports, or by requesting the information at Estimates hearings, a procedure used to discover ASIC's use of the powers in the February 2010 estimates. Alternatively, as Parliament

considers amendments to the parent statutes of each of our economic regulators it could insert appropriate reporting requirements.'

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