

Help! I'm being investigated!

Being under investigation by a regulator is possibly one of the most stressful experiences an individual or corporation can encounter in business. Investigations can generate uncertainty, create unplanned costs and impact on morale in the business, which can in some cases, last for years.

Are you actually under investigation?

In most cases, you will be acutely aware you are under investigation. However, if you are unsure, be direct with your regulator and ask them "Am I under investigation?" They should be able to provide a simple yes or no answer. If the answer is yes, you can then act to best protect your interests.

First and foremost, get legal representation

If you are unwell, you see a doctor. If you need a new electrical outlet, you get an electrician. When you are potentially in legal trouble, why would you not get a lawyer?

You should seek out a lawyer with appropriate skills and experience in the particular field, especially if the matter being investigated is a criminal one. Your local conveyancer, or the lawyer that prepared your Will may not have the necessary knowledge and experience to properly protect your interests.

Co-operate with the investigation

Resisting the investigation has the potential to compound your issues. In some cases, this may result in an additional investigation (and potential additional punishment) for obstructing the investigation. Subject to the advice of your legal representative, you should co-operate with the investigation. Typically, co-operation with the investigation is considered as a mitigating factor in deciding potential regulatory action.

Facts are facts, and they do not change with time. **Never** lie or attempt to deceive the investigator(s). A good investigator is trained to verify all aspects of the information they receive against other sources. Inconsistencies in the information you provide can damage your credibility and work against when the regulator considers what action is appropriate once the investigation is complete.

Ensure you receive procedural fairness

This aspect is often overlooked or misunderstood by investigators and those under investigation. Essentially, if you are likely to be adversely affected by a decision made as a result of an investigation (eg. be fined, incur a civil penalty, be criminally prosecuted, etc) you must receive procedural fairness. This has three parts:

1. You are given a fair hearing

This means that **before** a decision is made, you are able to present your case and have it considered before a decision is made. This typically occurs in the form of a "show cause" or "pre-enforcement" letter that contains the pertinent information which a decision is likely to be made on. However, this could also potentially be done verbally during an interview (hence, why it is important to have legal representation).

2. The regulatory decision is made impartially

The person making the final decision about the action to be taken must not have an actual or perceived bias. Normally, this means the investigator should not be the one making the final decision in relation to the matter they have investigated.

3. The decision is supported by the evidence

There must be some rational foundation for any regulatory decision made. The reasons for the decision should be clearly stated by the regulator and be logically capable of supporting the facts.

Are you under investigation? Do you want to protect your interests and get back to business? Then get in touch with JS Regulatory Services. We love making regulation work best, for everyone.



Phone: 02 6188 7700

Email: mail@jsrs.com.au

www.jsrs.com.au