

EXPLANATORY MEMORANDUM – EXPOSURE DRAFT

Australian Securities and Investments Commission Act 2001

*Australian Securities and Investments Commission Amendment Regulations 2013
(No. 1)*

The Australian Securities and Investments Commission (ASIC) was initially established as the Australian Securities Commission by the *Australian Securities Commission Act 1989*. The *Australian Securities and Investments Commission Act 2001* (the Act) continued ASIC.

Section 251 of the Act provides that the Governor-General may make regulations, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 127(5A) of the Act provides that the Regulations (the *Australian Securities and Investments Commissions Regulations 2001* (the Principal Regulations)) may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of section 127 of the Act.

The purpose of the proposed Regulations is to amend the Principal Regulations to specify that disclosing information to the Energy Security Council (the Council) or other persons whose duties include assisting the Council to perform its functions, to assist the Council to perform its functions is authorised use and disclosure of the information.

The Commonwealth Government announced the establishment of the Council on 10 July 2011. The Council is a non-statutory body and has no statutory powers.

The purpose of the Council is to provide advice to the Government on emerging risks to energy security and possible support measures to avert these risks. It will also advise on the provision of loans to electricity generators for the refinancing of existing debt where refinancing is not available from commercial sources on reasonable terms. The Council's functions are further outlined in the Charter of the Energy Security Council which was announced by the Deputy Prime Minister – the Hon Wayne Swan, the Minister for Climate Change and Energy Efficiency – the Hon Greg Combet and the Minister for Resources, Energy and Tourism – the Hon Martin Ferguson, on 12 October 2011.

The Chair of ASIC is a member of the Council. It may be desirable for the Chair, in this role, or another representative of ASIC to disclose confidential information to the Council that has been collected or obtained by ASIC in the normal course of its operations. ASIC will not be asked to collect or obtain information on behalf of the Council. The Regulations specify that information may be disclosed by ASIC to the Council for the purposes of the Council performing its functions.

The Council is supported by a Secretariat which is located within the Australian Treasury. The Regulations specify that information may also be disclosed by ASIC to the Secretariat.

Details of the Regulations are set out in Attachment A.

Clause 506 of the *Corporations Agreement 2002* (Corporations Agreement) states that the Commonwealth will not introduce a Bill that would repeal or amend the national law, or make a regulation under the national law unless, before its introduction or making, the Ministerial Council (for Corporations) has been consulted about it and, except as provided by this Part, has approved it. The national law is defined to include the Act. The Commonwealth has consulted with the Council on the proposed Regulations.

A statement of the Regulation's compatibility with human rights is set out in Attachment B.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Minute recommends that the Regulations be made in the form proposed.

Authority: Subsection 127(5A) of the
Australian Securities and Investment Commission Act 2001

ATTACHMENT A

Details of the proposed ASIC Securities and Investments Commission Amendment Regulations 2013 (No. 1)

Regulation 1 – Name of regulation

This regulation specifies the name of the Regulations as the *Australian Securities and Investments Commission Amendment Regulations 2013 (No. 1)*.

Regulation 2 – Commencement

This regulation specifies that the Regulations will commence on the day after they are registered.

Regulation 3 – Authority

This regulation provides that the authority for making the Regulation is the *Australian Securities and Investment Commission Act 2001* (the Act).

Regulation 4 – Schedule(s)

This regulation provides that Schedule 1 amends the *Australian Securities and Investments Commission Regulations 2001*.

Schedule 1 – Amendments

Item [1] inserts a new regulation 8AB to specify that the disclosure of information

- to the Energy Security Council; or
- other persons whose duties include assisting the Council to perform its functions;

for the purpose of assisting the Council to perform its functions is authorised use and disclosure of the information.

This will allow ASIC to disclose information to the Council and its Secretariat for the purposes of the Council undertaking its functions as outlined in the Charter of the Council.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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(No 1.)***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument specifies that the Chair of the Australian Securities and Investments Commission (ASIC), or another representative of ASIC, can disclose confidential information to the Energy Security Council (the Council). This information would have been collected or obtained by ASIC in the normal course of its operations.

The purpose of the Council is to provide advice to the Government on emerging risks to energy security and possible support measures to avert these risks. Disclosing information to the Council will assist it performing its functions.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.