



Mutual Assistance in Business Regulation Act 1992

No. 25 of 1992

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Act to extend to external Territories
5. Object of Act

PART 2—REQUESTS BY FOREIGN REGULATORS

6. Making of requests
7. Commonwealth regulator's consideration of requests
8. Attorney-General's consideration of matter
9. Conditions etc. relevant to an authorisation
10. Taking of evidence etc.
11. Appearance to be in private
12. Representation
13. Information provider to comply with requirement
14. Self-incrimination
15. Legal professional privilege
16. Taking of evidence—protection of persons
17. Evidence to be put in writing etc.
18. Evidence etc. to be sent to foreign regulator

PART 3—MISCELLANEOUS

19. Act not to limit other provision of assistance
20. Orders under Foreign Proceedings (Excess of Jurisdiction) Act not to be contravened
21. Allowances and expenses
22. Delegation by Attorney-General
23. Regulations



Mutual Assistance in Business Regulation Act 1992

No. 25 of 1992

**An Act to enable certain Commonwealth
business-regulating authorities to provide assistance to
certain foreign business-regulating authorities or agencies,
and for related purposes**

[Assented to 12 May 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Mutual Assistance in Business Regulation Act 1992*.

Commencement

2.(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

10 (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the

Royal Assent, it commences on the first day after the end of that period.

Interpretation

3.(1) In this Act, unless the contrary intention appears:

“business law” means a law that regulates, or relates to the regulation of, business or persons engaged in business; 5

“Commonwealth regulator” means an authority of the Commonwealth that:

(a) has functions relating to the administration or enforcement of a business law of the Commonwealth, a State or a Territory; and 10

(b) is prescribed for the purposes of this definition;

“foreign business law” means a business law of a foreign country;

“foreign regulator” means:

(a) the government of a foreign country or a part of a foreign country; or 15

(b) an agency of such a government having functions relating to the administration or enforcement of a foreign business law; or

(c) a person or body that is certified by such a government as having such functions in the country or part of a country that it governs; 20

“foreign request” means a request under section 6.

(2) For the purposes of this Act:

(a) a colony, territory or protectorate of a foreign country; and

(b) a territory for the international relations of which a foreign country is responsible; 25

is taken, unless the contrary intention appears, to be part of that foreign country.

(3) A reference in this Act to a law of a foreign country includes a reference to a law of a part of, or a law in force in a part of, the foreign country. 30

Act to extend to external Territories

4. This Act extends to every external Territory.

Object of Act

5.(1) The object of this Act is to enable Commonwealth regulators to render assistance to foreign regulators in their administration or enforcement of foreign business laws by obtaining from persons relevant information, documents and evidence and transmitting such information and evidence and copies of such documents to foreign regulators. 35

(2) Nothing in this Act is intended to limit the operation of the *Mutual Assistance in Criminal Matters Act 1987*. 40

PART 2—REQUESTS BY FOREIGN REGULATORS

Making of requests

5 **6.(1)** A foreign regulator, for purposes relating to the administration or enforcement of a foreign business law, may request a Commonwealth regulator to arrange for:

- (a) the obtaining from a person of information, documents or evidence specified in the request or relating to a matter specified in the request; and
- 10 (b) transmitting such information, evidence or copies of such documents to the foreign regulator.

(2) The Commonwealth regulator must not take action under section 7 in relation to the request unless the Commonwealth regulator has received in writing from the foreign regulator:

15 (a) an undertaking by the foreign regulator to the effect that information or evidence obtained from the person and provided to the foreign regulator under this Act:

(i) will not be used for the purposes of criminal proceedings against the person or of proceedings against the person for the imposition of a penalty; and

20 (ii) to the extent to which it is within the ability of the foreign regulator to ensure it, will not be used by any other person, authority or agency for the purposes of any such proceedings; and

25 (b) such information in relation to the request as is required by the regulations.

Commonwealth regulator's consideration of requests

7.(1) Subject to subsection 6(2), a Commonwealth regulator that has received a foreign request must, in writing:

30 (a) inform the Attorney-General that the Commonwealth regulator:

(i) does not oppose the request; or

35 (ii) does not oppose the request subject to conditions specified by the Commonwealth regulator being imposed in relation to the providing of anything in compliance with the request and the giving by the foreign regulator of any undertakings so specified for the purpose of ensuring compliance with any such conditions; or

(b) refuse the request.

40 **(2)** Conditions mentioned in subparagraph (1)(a)(ii) may include (but need not be limited to) conditions relating to any or all of the following:

(a) maintaining the confidentiality of anything provided in compliance with the request, in particular, information that is

personal information within the meaning of the *Privacy Act 1988*;

- (b) the storing of, use of, or access to, any such thing;
- (c) copying, returning or disposing, of copies of documents provided in compliance with the request.

5

(3) When considering what action to take in relation to the request, the Commonwealth regulator is to take into account the following matters and any other matters that the Commonwealth regulator thinks relevant:

- (a) whether the Commonwealth regulator is likely to be able to obtain the requested information, documents or evidence;
- (b) the cost to the Commonwealth regulator of complying with the request;
- (c) whether the foreign regulator could more conveniently have the request satisfied from another source;
- (d) the extent to which the functions of the foreign regulator correspond with the functions of the Commonwealth regulator;
- (e) whether the foreign regulator would be likely to comply with a similar request made by the Commonwealth regulator and whether any arrangement with the foreign regulator to that effect exists;
- (f) whether, in the opinion of the Commonwealth regulator, it would be more appropriate for the request to be dealt with under the *Mutual Assistance in Criminal Matters Act 1987*.

15

20

Attorney-General's consideration of matter

25

8.(1) If the Commonwealth regulator informs the Attorney-General as mentioned in subparagraph 7(1)(a)(i) or (ii), the Attorney-General must, in writing:

- (a) authorise the obtaining of the information, documents or evidence, as the case may be, from the person in compliance with the request; or
- (b) refuse the request.

30

(2) In considering action under this section or subsection 9(2) in relation to the request, the Attorney-General is to take into account the following matters and any other matters that he or she thinks relevant:

35

- (a) whether it is in Australia's national interest to comply with the request;
- (b) whether complying with the request is consistent with international law and international comity;
- (c) whether anything provided in compliance with the request is likely to be used for punishing a person for an offence of a political character;
- (d) whether anything provided in compliance with the request is likely to be used for prosecuting, punishing or otherwise harming

40

a person because of the person's race, sex, religion, nationality or political opinions;

- (e) whether it would be more appropriate for the request to be dealt with under the *Mutual Assistance in Criminal Matters Act 1987*.

Conditions etc. relevant to an authorisation

9.(1) Subject to subsection (2), if:

- (a) the Commonwealth regulator, in relation to a foreign request, has informed the Attorney-General as mentioned in subparagraph 7(1)(a)(ii); and
(b) the Attorney-General gives an authorisation under section 8 in relation to the request;

the authorisation is subject to compliance with any conditions and the giving of any undertaking specified by the Commonwealth regulator.

(2) In giving an authorisation under section 8, the Attorney-General may:

- (a) impose conditions or further conditions subject to which anything may be provided in compliance with the request; and
(b) require undertakings to be given by the foreign regulator to ensure compliance with any such conditions; and
(c) omit or vary any condition or undertaking to which the authorisation would, under subsection (1), otherwise be subject.

(3) An authorisation under section 8 that is subject to compliance with conditions or the giving of undertakings (including conditions or undertakings imposed or required under subsection (2)) must specify those conditions and any such undertaking.

Taking of evidence etc.

10.(1) Where the Attorney-General gives an authorisation under section 8, the following provisions of this section apply.

(2) The Commonwealth regulator may, by written notice served on the person to whom the authorisation relates, require the person:

- (a) to give to the Commonwealth regulator, by instrument signed by the person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, information to which the foreign request relates; or
(b) to produce to the Commonwealth regulator, or to a person specified in the notice acting on behalf of the Commonwealth regulator, in accordance with the notice, documents to which the foreign request relates; or
(c) to appear before a person specified in the notice acting on behalf of the Commonwealth regulator, at a time and place

specified in the notice, to give evidence to which the foreign request relates, either orally or in writing, and produce any such documents.

(3) In addition to such information, documents or evidence, an authorisation under section 8 extends to any other information, documents or evidence that, in the opinion of the Commonwealth regulator, is relevant to the matter to which the foreign request relates. 5

(4) A person mentioned in paragraph (2)(c) may require the evidence mentioned in that paragraph to be given on oath or affirmation and for that purpose the person may administer an oath or affirmation. 10

Appearance to be in private

11.(1) An appearance for the purpose of giving evidence by a person in accordance with a requirement under section 10 is to take place in private and may be attended only by a person mentioned in subsection (2). 15

(2) Only the following persons may be present during the taking of evidence:

- (a) the person taking or giving the evidence;
- (b) a staff member of the Commonwealth regulator who is approved by the Commonwealth regulator; 20
- (c) a representative of the foreign regulator;
- (d) a person who is present at the request of the person giving the evidence;
- (e) a person who is entitled to be present under a direction given by the person taking the evidence; 25
- (f) a person who is entitled to be present under section 12.

Representation

12. A person who appears before a person for the purpose of giving evidence in accordance with a requirement under section 10 may be represented by: 30

- (a) a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court; or
- (b) any other person (including a foreigner) having such expertise, whether in law or otherwise, as could be expected in the circumstances to be of assistance to the person giving evidence. 35

Information provider to comply with requirement

13.(1) A person must not, without reasonable excuse, fail to comply with a requirement made under section 10.

Penalty: Imprisonment for 2 years.

(2) A person must not, in purported compliance with a requirement made under section 10, give information or evidence knowing it to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

5 **Self-incrimination**

10 **14.(1)** For the purposes of subsection 13(1), it is not a reasonable excuse for a person to refuse or fail to give information or evidence, or to produce documents, in accordance with a requirement under section 10, that the information, evidence or production of the documents might tend to incriminate the person or make the person liable to a penalty.

(2) Subsection (3) applies if:

15 (a) before giving information or evidence in accordance with such a requirement, a person claims that the information or evidence might tend to incriminate the person or make the person liable to a penalty; and

(b) the information or evidence might in fact tend to incriminate the person or make the person liable to a penalty.

20 (3) The information or evidence, as the case may be, is not admissible in evidence against the person in:

(a) a criminal proceeding; or

(b) a proceeding for the imposition of a penalty;

other than a proceeding in respect of the falsity of the information or evidence, as the case may be.

25 **Legal professional privilege**

15.(1) This section applies where:

(a) under this Act, a person requires a lawyer to give information or produce a document; and

30 (b) giving the information or producing the document would involve disclosing a privileged communication made by, on behalf of, or to the lawyer in his or her capacity as a lawyer.

(2) The lawyer is entitled to refuse to comply with the requirement unless:

35 (a) if the person to whom, or by or on behalf of whom, the communication was made is a body corporate that is under official management or being wound up—the official manager or liquidator of the body; or

(b) otherwise—the person to whom, or by or on behalf of whom, the communication was made;

40 consents to the lawyer complying with the requirement.

(3) If the lawyer so refuses, he or she must, as soon as practicable, give to the person who made the requirement a written notice setting out:

- (a) if the lawyer knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and 5
- (b) if the communication was made in writing—sufficient particulars to identify the document containing the communication.

Penalty: \$1,500.

Taking of evidence—protection of persons 10

16.(1) A person taking evidence under this Act has, in the performance of such duties, the same protection and immunity as a Justice of the High Court.

(2) A barrister or solicitor, or other representative, appearing on a person's behalf before a person taking evidence under this Act has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the High Court. 15

(3) A person giving evidence under this Act has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in a proceeding in the High Court. 20

Evidence to be put in writing etc.

17. A person taking evidence under this Act is to cause the evidence to be put in writing and certify that the evidence was taken by the person.

Evidence etc. to be sent to foreign regulator 25

18.(1) Subject to this section, if a person complies with a requirement by a Commonwealth regulator under section 10, the Commonwealth regulator must:

- (a) in the case of the giving of information—send the information, or a copy of the information certified by the Commonwealth regulator to be a true copy, to the foreign regulator by whom the relevant foreign request was made; or 30
- (b) in the case of the production of documents—send copies of the documents certified by the Commonwealth regulator to be true copies to that foreign regulator; or 35
- (c) in the case of the taking of evidence—send the evidence, as put in writing and certified by the person taking it, to that foreign regulator.

(2) The Commonwealth regulator may send information, evidence or copies of documents (in this section called the “**requested material**”) to the foreign regulator in such form, and may edit or otherwise 40

organise the requested material, as seems to the Commonwealth regulator to be appropriate in the circumstances.

5 (3) The Commonwealth regulator may refuse to cause the requested material to be transmitted to the foreign regulator or may cause part only of the material to be so transmitted if, upon examination of the material, it appears to the Commonwealth regulator for any reason to be appropriate to do so.

10 (4) Where an authorisation under section 8 specifies an undertaking to be given by a foreign regulator, the requested material must not be transmitted to the foreign regulator until the undertaking is given.

PART 3—MISCELLANEOUS

Act not to limit other provision of assistance

15 19. Nothing in this Act prevents the obtaining for, or transmitting to, a foreign regulator of information, evidence or copies of documents otherwise than as mentioned in this Act if, apart from this Act, the information, evidence or copies would be lawfully so obtained or transmitted.

Orders under Foreign Proceedings (Excess of Jurisdiction) Act not to be contravened

20 20. Nothing in this Act authorises or requires anything to be done in contravention of an order in force under section 7 of the *Foreign Proceedings (Excess of Jurisdiction) Act 1984*.

Allowances and expenses

25 21. A person giving information or evidence, or producing documents, under this Act is entitled to be paid by the Commonwealth regulator such allowances for the person's travelling and other expenses as are prescribed.

Delegation by Attorney-General

30 22.(1) The Attorney-General may, by signed instrument, delegate to the Secretary to the Department or a Deputy Secretary in the Department any of his or her powers or functions under this Act.

35 (2) Where a delegate is of the opinion that, for reasons relating to Australia's national interest, he or she should, under subsection 8(1), refuse a foreign request, the delegate must refer the matter to the Attorney-General.

(3) A matter that has been so referred must be dealt with personally by the Attorney-General.

Regulations

23. The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act. 5

*[Minister's second reading speech made in—
House of Representatives on 26 February 1992
Senate on 26 March 1992]*