



Statutory Rules 1992 No. ^k1

331

Mutual Assistance in Business (Regulation) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901*, make the following Regulations under the *Mutual Assistance in Business Regulation Act 1992*.

Dated *20 October* 1992.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Michael Tate

Minister of State for Justice for and on behalf of the
Attorney-General

Citation

1. These Regulations may be cited as the Mutual Assistance in Business (Regulation) Regulations.

Commencement

2. These Regulations commence on the date of commencement of the Act.

Interpretation

3. In these Regulations, “**the Act**” means the *Mutual Assistance in Business Regulation Act 1992*.

Commonwealth regulators

4. For the purposes of the definition of Commonwealth regulator in subsection 3 (1) of the Act, the following authorities of the Commonwealth are prescribed:

- (a) Australian Securities Commission;
- (b) Trade Practices Commission.

Information to be provided by foreign regulators

5. For the purposes of paragraph 6 (2) (b) of the Act, the following information is required in relation to a foreign request:

- (a) a description in general terms of the subject matter of the request and of the facts of the matter including in particular:
 - (i) the conduct under investigation; and
 - (ii) any periods of time to which the request relates; and
 - (iii) the names, and last known addresses, of individuals to whom, or bodies corporate to which, the request relates or refers; and
- (b) a description in general terms of the assistance sought; and
- (c) the purpose for which the assistance is sought; and
- (d) a copy of the relevant foreign business law and:
 - (i) if the law is not in the English language—an English translation; and
 - (ii) a statement of the way in which the facts give rise to a belief or suspicion that the law has been, or may have been, contravened; and
- (e) a description of the functions of the foreign regulator making the request that is sufficient to enable the Commonwealth regulator to consider the extent to which the functions of the foreign regulator correspond with the functions of the Commonwealth regulator; and
- (f) a statement as to whether the foreign regulator will be able to comply with a similar request made by the Commonwealth regulator; and

- (g) a statement as to whether the foreign regulator has sought, or could conveniently seek from another source the information, evidence or documents to which the request relates; and
- (h) a statement of the grounds on which it is considered that the Commonwealth regulator will be likely to be able to obtain the information, evidence or documents; and
- (j) the purpose for which the information, evidence or documents is to be used or may at any future time be used; and
- (k) details of the confidentiality that the foreign regulator will accord any information provided in compliance with the request; and
- (l) the time within which the foreign regulator desires to receive the information; and
- (m) whether the foreign regulator desires to receive the information in a single transmission or as and when each item of information becomes available; and
- (n) the name and telephone number of an officer of the foreign regulator who is familiar with the subject matter of the request and who will be available by telephone to answer queries or clarify matters relating to the request if asked to do so by an officer of the Commonwealth regulator.

Notices by a Commonwealth regulator

6. A notice served under subsection 10 (2) of the Act must be in accordance with Form 1 in Schedule 1.

Prescribed allowances

7. For the purposes of section 21 of the Act, the following allowances are prescribed for a person attending at a place to give information or evidence, or to produce documents, under the Act:

- (a) the reasonable cost of travel between the person's place of residence and the first-mentioned place, and return; and
- (b) if the person has to be absent from his or her place of residence for at least 1 night—the reasonable cost of meals and accommodation.

SCHEDULE 1

Regulation 6

FORMS

FORM 1

Regulation 6

COMMONWEALTH OF AUSTRALIA

Mutual Assistance in Business Regulation Act 1992

NOTICE UNDER SECTION 10 OF THE ACT TO GIVE INFORMATION,
TO PRODUCE DOCUMENTS OR TO APPEAR IN ORDER
TO GIVE EVIDENCE AND PRODUCE DOCUMENTS

To: *[Name of person or body corporate]*
of: *[address of person or body corporate]*

[Name of Commonwealth regulator], a Commonwealth regulator for the purposes of the *Mutual Assistance in Business Regulation Act 1992*, gives you notice, under section 10 of that Act, that you are required:

- *(a) to give to *[Name of Commonwealth regulator]*, by instrument signed by *[you* / a competent officer*]*, within the following time:
[state time], and in the following manner:
[state manner], the following information that relates to a foreign request *[state the nature and substance of the request]* under section 6 of that Act:
[state information];
- *(b) to produce to *[state Commonwealth regulator or person acting on its behalf]* documents to which the request relates (including in particular *[state the nature and substance of the request and identify any specific documents]**);
- *(c) to appear *[in the case of a body corporate, insert 'by a competent officer']* before *[state person before whom the addressee or competent officer is to appear]* at the following place:
[state address of place with sufficient particularity] at:
[state time] on *[state day of week and date]*
to give evidence *[state 'orally' or 'in writing']* to which the request relates

SCHEDULE 1—continued

and to produce documents to which the request relates (including in particular [state the nature and substance of the request and identify any specific documents]*).

The following conditions have been specified under subparagraph 7 (1) (a) (ii) or paragraph 9 (2) (a) of the Act:

[state the conditions, or write 'nil', as appropriate]

*delete as appropriate

Dated:

(Signature)

For [state name of Commonwealth regulator]

NOTES:

1. Under section 13 of the *Mutual Assistance in Business Regulation Act 1992*, it is an offence, for which maximum penalty is 2 years' imprisonment, if a person, without reasonable excuse, fails to comply with a requirement of section 10 of the Act or, in purported compliance with that section, gives evidence or information knowing it to be false or misleading in a material particular.
2. Section 14 of the Act provides that, for the purposes of section 13, it is not a reasonable excuse for a person to refuse or fail to give information or evidence, or to produce documents, that the information, evidence or production of documents might tend to incriminate the person or make the person liable to a penalty.
3. In addition, section 14 provides that the information or evidence may not be used in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information or the evidence.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

1 1992. 21 October/