

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 192

Issued by authority of the Parliamentary Secretary to the Treasurer

Corporations Act 2001

Australian Securities and Investments Commission Act 2001

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

Section 251(1) of the *Australian Securities and Investments Commission Act 2001* and section 1364(1) of the *Corporations Act 2001* provide that the Governor-General may make regulations necessary or convenient for carrying out or giving effect to the Acts.

The *Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No. 1)* (the Regulation):

- removes the requirement for the Takeovers Panel (the Panel) to include reasons when notifying persons that the Panel has decided not to conduct proceedings;
- facilitates the use of appropriate technology in conducting Panel conferences;
- removes the requirement that the Panel make and retain a transcript of proceedings of a conference;
- requires the Australian Securities and Investments Commission (ASIC) to disclose to the Minister its use of specified information gathering powers; and
- specifies the date from which directors' reports become subject to Corporations Regulations relating to certain disclosure requirements.

Removal of requirement to include reasons at the time of notifying parties

If the Panel decides not to conduct proceedings in relation to an application under section 656A, 657C or 657EA of the *Corporations Act 2001*, the Panel must, as soon as practicable, notify the persons to whom the relevant application relates, and include in each notice the reasons for the decision. The requirement to include reasons at the same time as a notification may cause undue delay to the communication of a decision.

The Regulation removes the requirement under the current law for the Panel to provide reasons at the time of providing a notification. It is not intended to alter the general practice of the Panel to provide reasons for its decisions. Also, the Panel will continue to be subject to the requirement to provide reasons under the *Administrative Decision (Judicial Review) Act 1977*.

Facilitating the use of Panel conferences

The President of the Panel has the power to convene a conference, which may be to clarify matters, resolve inconsistent statements, or otherwise inform the Panel on matters relating to proceedings. Regulation 38(3) requires the Panel to make and retain a transcript of the proceedings of a conference. This requirement makes it difficult and costly for the Panel to hold conferences. In particular, this requirement may hinder electronic conferencing as it may be difficult to attribute comments to particular participants.

The Regulation ensures that it is not compulsory for the Panel to make and retain a transcript of proceedings. The Regulation also aims to facilitate the use of electronic conferencing facilities by ensuring that a person is able to attend a conference without being physically present at the nominated location of the conference.

ASIC disclosure of use of information gathering powers

ASIC has powers under a number of different pieces of legislation to compulsorily gather information. The Regulation requires ASIC to disclose to the Minister its use of these information gathering powers for the current and immediately preceding year. The Regulation assists in improving transparency around ASIC's use of information gathering powers, as well as provide ASIC with additional clarity on its annual reporting obligations.

Remuneration disclosure

The *Corporations Regulations 2001* provide that certain disclosures regarding transactions with, and remuneration paid to, key management personnel are to be included in a directors' report for listed companies. The Regulation clarifies that these disclosures are to be included in directors' reports for financial years starting on or after 1 July 2013.

Under the *Corporations Agreement 2002* (the Corporations Agreement), the State and Territory Governments agreed to refer their legislative powers with respect to corporate regulation to the Commonwealth. Pursuant to subclause 506(1) of the Corporations Agreement, the Legislative and Governance Forum for Corporations (the Forum, formerly the Ministerial Council for Corporations) has been consulted regarding the Regulation. Under subclause 507(1) of the Corporations Agreement, the approval of the Forum is not required.

The Acts specify no conditions that would need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after registration.

Statement of Compatibility with Human Rights

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

Corporation and Australian Securities and Investments Commission Amendment Regulations 2013 (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

The amending regulations:

- Require the Australian Securities and Investments Commission (ASIC) to include in its annual report to the Minister information on its use of information gathering powers;
- Facilitate the efficient operation of the Takeovers Panel by allowing it greater flexibility in its communications and more time to make decisions; and
- Adjust the commencement date of financial reporting regulations to clarify their application with respect to the relevant accounting standards.

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.