

The Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Level 24, 120 Collins Street  
Melbourne VIC 3000  
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200  
Facsimile: (03) 9280 3444  
ASIC website: [www.asic.gov.au](http://www.asic.gov.au)

February 2013

### **Submission to inquiry into the Regulatory Powers (Standard Provisions) Bill 2012**

The Australian Securities and Investments Commission (ASIC) wishes to make the following submission in relation to the Senate Legal and Constitutional Affairs Committee inquiry into the Regulatory Powers (Standard Provisions) Bill 2012.

ASIC is responsible for regulation under a wide range of legislation including the following acts (ASIC's legislation);

- *Corporations Act 2001*
- *Australian Securities and Investments Commission Act 2001*
- *National Consumer Credit Protection Act 2009*
- *Business Names Registration Act 2011*
- *Insurance Contracts Act 1984*
- *Superannuation (Resolution of Complaints) Act 1993*
- *Superannuation Industry (Supervision) Act 1993*
- *Retirement Savings Accounts Act 1997*
- *Life Insurance Act 1995*
- *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*

Other regulators also administer some parts of these Acts.

ASIC has a range of powers which it frequently relies upon to carry out its regulatory and enforcement functions. These powers are principally contained in the *Corporations Act 2001*, the *Australian Securities and Investments Commission Act 2001*, the *National Consumer Credit Protection Act 2009* and the *Business Names Registration Act 2011*.

ASIC considers that the application of the provisions of the Bill to ASIC would be materially detrimental to ASIC's capacity to carry out its regulatory and enforcement functions. This is principally because the Bill does not include a number of important powers presently contained in our legislation that ASIC frequently relies upon in carrying out surveillance and investigatory activities including the power to conduct examinations on oath and to serve notices for the production of documents.

As an example, the power to serve notices for the production of documents is important as it compels the production of documents from many persons and organisations that are prohibited from voluntarily assisting ASIC by reason of confidentiality obligations. Under the Bill, there would be no power to compel the provision of documents other than by means of a search warrant.

Many ASIC investigations involve hundreds of thousands of documents, if not more, and the length of time which would be required to gather that number of documents by means of a warrant is neither contemplated by the Bill nor practicable. There are significant advantages in the use of notices to both ASIC and the person or enterprise required to provide documents. On ASIC's part, there are significantly less resources required. On the part of the recipient of a notice, the disruption to business operations, inherent in the execution of a warrant, is minimised as under a notice a reasonable time, depending on the scope of the material to be produced, is allowed to enable the recipient to locate and produce relevant material.

Further, some of the powers contained in the Bill, such as those relating to enforceable undertakings, are different to comparable powers already contained in ASIC's legislation and which have been crafted to take into account particular features of ASIC's jurisdiction. Appropriate procedures for the use of our powers are well settled and subject to effective reporting and judicial and parliamentary oversight.

ASIC has been informed by the Attorney-General's Department that the Drafting Direction for this Bill, which notes that the investigation powers in the legislation would not be used for certain named agencies in the Attorney-General's portfolio, will also note that the investigation powers in Part 3 may not be appropriate in the case of other agencies, such as ASIC, that have powers tailored to deal with particular policy issues.

While this recognition in the Drafting Directions is welcomed and clearly of assistance to ASIC, we would note that it only refers expressly to the investigation powers in the Bill. ASIC would be concerned if it were sought to apply any of the monitoring and investigative powers sections of the Bill to ASIC as such application would be detrimental to the achievement of ASIC's legislated objectives.

Julie Read  
Special Counsel  
Chief Legal Office  
ASIC