

2013-2014-2015-2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (2017 MEASURES NO.#) BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Small Business and Assistant Treasurer, the Hon Kelly O'Dwyer MP)

Table of contents

No table of contents entries found.

Chapter 1

Amendment to the Australian Securities and Investments Commission Act 2001

Outline of chapter

1.1 Schedule ## to the Bill will amend the Australian Securities and Investments Commission Act 2001 (the Act) to allow the Australian Securities and Investments Commission (ASIC) to more readily share confidential information with the Commissioner of Taxation. The amendment will assist both ASIC and the Commissioner of Taxation to perform their functions more effectively.

Context of amendments

1.2 ASIC has a range of powers to gather information and documents as part of its role in regulating Australian companies, financial markets and financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

1.3 ASIC uses the information and documents gathered to ensure compliance with the law and to take enforcement action where necessary.

1.4 There are strict confidentiality rules around the use and disclosure of the information ASIC obtains. Under section 127 of the Act, ASIC must take all reasonable measures to protect confidential information it receives as part of its statutory functions from unauthorised use or disclosure.

1.5 ASIC is, however, authorised to share the confidential information it obtains with certain prescribed individuals and entities, including the relevant Minister, the Reserve Bank of Australia and the Australian Prudential Regulation Authority (section 127(2A) of the Act).

1.6 The Act also permits ASIC to share the information with other agencies and regulatory bodies where the ASIC Chairperson is satisfied that it will enable or assist them to perform their functions or exercise their powers.

1.7 At present, in order for ASIC to be able to share information with the Commissioner of Taxation, the ASIC Chairperson, or their delegate, must be satisfied that doing so would enable or assist the Commissioner of Taxation to perform or exercise their functions or powers.

1.8 This causes inefficiencies and hinders effective collaboration between the agencies in ensuring compliance and investigating potential illegal activity.

Summary of new law

1.9 The new law amends the Act to specify that the sharing of confidential ASIC information with the Commissioner of Taxation is authorised use and disclosure of that information.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
ASIC is authorised to share confidential information with the Commissioner of Taxation.	A confidentiality provision prohibits ASIC from sharing confidential information with the Commissioner of Taxation, unless the Chairperson, or their delegate, is satisfied that the information will enable or assist the Commissioner of Taxation to perform or exercise their functions or powers.

Detailed explanation of new law

1.10 The new law adds the Commissioner of Taxation to the entities listed in subsection 127(2A) of the Act to which disclosure of confidential information is authorised. [*Schedule X, item 1, subsection 127(2A)*]

1.11 As a result of this amendment, ASIC will be authorised to provide the Commissioner of Taxation with information it holds that is protected or that is given to it in confidence in connection with the performance of its functions or exercise of its powers. The amendment simplifies the process and creates efficiencies by allowing information to be shared without the Chairperson's, or their delegate's, involvement.

1.12 The new law enables ASIC to more effectively share information with the Commissioner of Taxation, enabling more effective collaboration during investigations into illegal or high risk activities. Enhancing information sharing will also enable both agencies to ensure compliance with laws and identify patterns of non-compliance.

1.13 The new law mirrors the existing arrangement for sharing information between ASIC and the Reserve Bank of Australia, the Australian Prudential Regulation Authority and the relevant Minister.

Application and transitional provisions

1.14 ASIC will be authorised to disclose information to the Commissioner of Taxation following the commencement of the Schedule. This applies in relation to disclosure of any information held by ASIC at that time regardless of whether it was obtained before or after this amendment commences. *[Schedule x, item 2]*

1.15 The amendment is prospective because it only authorises the disclosure of information after commencement.

Chapter 2

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (2017 Measures No.) Bill 2017

2.1 Schedule # 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

2.2 Schedule # to the Bill amends the *Australian Securities and Investments Commission Act 2001* (the Act) to allow the Australian Securities and Investments Commission (ASIC) to more readily share confidential information with the Commissioner of Taxation.

Human rights implications

2.3 Schedule # engages the right to unlawful interference with privacy under article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it provides for ASIC to share confidential information with the Commissioner of Taxation.

2.4 The amendment authorises the disclosure of confidential information from ASIC to the Commissioner of Taxation. This will enable more effective collaboration between ASIC and the Commissioner of Taxation during investigations into illegal and high risk activities. The authorisation to share confidential information will assist the Commissioner of Taxation to ensure compliance with laws.

2.5 The amendment is consistent with existing information sharing arrangements between ASIC and the Reserve Bank of Australia, the Australian Prudential Regulation Authority and the relevant Minister.

2.6 ASIC is also required to take all reasonable measures to protect information it receives in confidence in connection with its statutory functions from other unauthorised use or disclosure.

Conclusion

2.7 The amendment in Schedule # is consistent with Article 17 of the ICCPR because it establishes a further legal basis for ASIC to disclose confidential information to the Commissioner of Taxation. The amendment benefits the community by providing for better monitoring of illegal and other risk activities by the Commissioner of Taxation.