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### **Australian Securities and Investments Commission Amendment Regulations 2013 (No. 1)**

The Energy Supply Association of Australia (esaa) welcomes the opportunity to make a submission to The Treasury on the Commonwealth Government's proposed amendment to the *Australian Securities and Investments Commission Regulations 2001*.

The esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of 36 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ more than 51,000 people and contribute \$16.5 billion directly to the nation's Gross Domestic Product.

The esaa does not support the proposal to allow the Australian Securities and Investments Commission (ASIC) to disclose information to the Energy Security Council (ESC). As part of its work, ASIC collects sensitive commercial-in-confidence information on a compulsory and voluntary basis. How ASIC may use this information is governed by legislation. Unlike ASIC, the ESC is not a statutory body governed by legislation, but is instead covered by a charter.

Given the commercially sensitive nature of the information ASIC holds, it is not appropriate for it to be disclosed to an organisation that does not have a clear statutory obligation placed on it to keep the information it receives confidential and strictly defines how the information may be used. It isn't clear why Parliament sees fit to impose strict obligations on ASIC around confidentiality but no equivalent obligations on the ESC. This issue is likely to be exacerbated if the G20 over-the-counter derivatives changes are applied to the electricity market, increasing the level of sensitive information ASIC will hold.

Further, as the charter can be amended unilaterally by the Government at any time, there is nothing preventing the use of any information ASIC discloses for a range of as yet unspecified purposes. This will discourage voluntary disclosure to ASIC, as business will have no assurance of how or where this information may be used.

The charter does require ESC members to 'respect the confidential nature of the information provided in the course of being a member of ESC'. However, the terms of the confidentiality acknowledgements are not available to assess what protection this affords businesses. It is also not clear what limitations are placed on the Secretariat if they received information originally provided to ASIC.

There does not appear to be a clear rationale for the disclosure of information held by ASIC. In the case of applications for loans, the ESC can:

- determine whether the assessment of the relevant entity's financial situation which has been provided is sufficiently detailed and of a sufficient standard; and
- ask the applicant to arrange an assessment by an independent, professional source.

This indicates that the ESC will be able to access all necessary financial information as the need arises. With respect to its other functions, the ESC's main role is to plan and prepare for a potential failure in the energy supply sector. Again it is not clear why confidential information provided to ASIC for their purposes needs to be disclosed to ESC to carry out this function.

Any questions about our submission should be addressed to Fergus Pope, by email to [fergus.pope@esaa.com.au](mailto:fergus.pope@esaa.com.au) or by telephone on (03) 9205 3107.

Yours sincerely



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