



4 December 2013

Ms Sophia Wrightman

By email

Dear Ms Wrightman

**Request For Internal Review Under Section 54B  
Of The Freedom Of Information Act 1982**

I refer to your email of 4 November 2013 in which you requested that an internal review be conducted under section 54B of the Freedom of Information Act 1982 (the *FOI Act*) in respect of the FOI decision of Mr Matthew Povey of ASIC of 28 October 2013, advising you that there was no documentation in answer to the terms of your FOI request on 16 October 2013.

I am authorised to conduct the internal review under section 54 of the FOI Act.

I note the terms of the request under review to be as follows:

*CIK: 0000805157*

*Company Name: COMMONWEALTH OF AUSTRALIA*

*[http://www.sec.gov/Archives/edgar/data/805157/999999999511002281/xslEFFEFFECTX01/primary\\_doc.xml](http://www.sec.gov/Archives/edgar/data/805157/999999999511002281/xslEFFEFFECTX01/primary_doc.xml)*

*Please provide documentation that the Commonwealth of Australia (as recorded above) is registered as per the ASIC guidelines to do business in Australia.*

I have noted the comments made in your email of 4 November 2013.

**Decision**

Section 24A of the FOI Act states:

*Document lost or non-existent*

*An agency or Minister may refuse a request for access to a document if:*

- (a) all reasonable steps have been taken to find the document; and*
- (b) the agency or Minister is satisfied that the document:*



**ASIC**

Australian Securities & Investments Commission

Level 5, 100 Market Street, Sydney  
GPO Box 9827 Sydney NSW 2001  
DX 653 Sydney

Telephone: (02) 9911 2000

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- i. *is in the agency's or Minister's possession but cannot be found;*  
 or  
 ii. *does not exist.*

I have made full enquiries in respect to the terms of your request of 16 October 2013.

I am satisfied that ASIC has no documents answering the terms of your request.

Accordingly the request is refused under s24A of the FOI Act.

#### The SEC filings

For your information, the information that is noted on the website of the Securities and Exchange Commission of the United States (the *SEC*) to which you refer above will typically be filings by the Commonwealth of Australia in relation to the Commonwealth of Australia raising funds in the US (eg by way of issuing Commonwealth Treasury Bonds) or guaranteeing the repayment of funds raised in the US by the respective State Governments of Australia (eg by way of issuing State Government Treasury Bonds).

These filings are required by the laws of the United States as they are offers of debt securities in the US. These laws are administered by the SEC. Such offers are not regulated by legislation administered by ASIC.

#### Telstra 3 offering

I refer to your email of 1 November 2013 in relation to which you requested ASIC to “clarify that there was no obligation in 2006 for the Commonwealth of Australia to register under any legislation administered by ASIC while performing business in Australia listed as Telstra 3 share offer.”

I confirm there was no obligation for the Commonwealth of Australia to “register” under any legislation administered by ASIC while performing business in Australia in relation to the Telstra 3 share offer.

The Commonwealth of Australia was however subject to Chapters 6D and 7 of the *Corporations Act 2001* in relation to the Telstra 3 share offer. This was because the Commonwealth Parliament had made amendments to legislation to bring about that regulatory outcome. In particular, s8AT of the *Telstra Corporations Act 1991* had the effect that Chapters 6D and 7 of the *Corporations Act* would apply to the Commonwealth of Australia in relation to the sale of its shares in Telstra:

- “(1) Despite subsection 5A(4) of the *Corporations Act 2001* (but subject to subsection 5A(5) of that Act), Chapters 6CA, 6D and 7 of the *Corporations Act 2001* bind the Crown in right of the Commonwealth to the extent to which those Chapters deal with the formulation, entering into, or carrying out, of a Telstra sale scheme.
- (2) Subsection (1) has effect despite anything in the *Corporations Act 2001*.”.

Accordingly, the Commonwealth of Australia was required to lodge certain documents with ASIC in relation to the Telstra 3 share offer in 2006. This is the reason why ASIC has public records of certain documents being lodged with ASIC by the Commonwealth

of Australia (eg lodgment of the prospectus) in relation to the Telstra 3 share offer. A copy of these documents can be obtained by making an application to ASIC and paying the relevant fee: see <https://connectonline.asic.gov.au/>. Documents that are open to public access, as part of a public register or otherwise, where that access is subject to a fee or other charge, are not accessible under the FOI Act: see s12 of the FOI Act.

## Review

In the event that you are dissatisfied with the decision:

1. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.
2. You may lodge a complaint to the Australian Information Commissioner in respect to the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner - GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.

Yours faithfully



Grant Moodie  
Special Counsel, Chief Legal Office

Authorised internal-reviewer under subsection 54(1) of the FOI Act)  
for the Australian Securities and Investments Commission