



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 7, 120 Collins Street,
Melbourne VIC 3000

Mail address for Melbourne office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075

Fax: +61 1300 729 000

www.asic.gov.au

Harry Hopes

Via email: foi+request-6075-247e9cc3@righttoknow.org.au

17 January 2020

Dear Mr Hopes

Freedom of Information Request FOI 011-2020

I refer to your request for access to documents made under the *Freedom of Information Act 1982 (FOI Act)* dated 14 January 2020 by which you requested access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request provides the following:

'I request the instrument, or otherwise information, that provides evidence the Corporations Act 2001 is valid Commonwealth law in that it has received the Royal assent pursuant to the Constitution at section 58.'

I am the authorised decision-maker for the purposes of section 23 of the FOI Act and this letter gives notice of my decision.

Decision

My decision is to refuse your request for access. The reasons for my decision are set out below.

Information considered

In reaching my decision, I have considered the following:

- the FOI Act;
- the *Corporations Act 2001 (Corporations Act)*;
- the Commonwealth of Australia Constitution Act (**Constitution**);
- the *Legislation Act 2003 (Legislation Act)*
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (FOI Guidelines); and
- the scope of your request.

Background information

Section 58 of the Constitution relevantly provides:

When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Following Royal Assent, the bill becomes an Act of Parliament and, in the case of the Corporations Act, commenced on the date fixed by Proclamation.

Section 15F of the Legislation Act provides that the First Parliamentary Counsel must register an Act as soon as practicable after the Act is assented to. Under section 15B of the Legislation Act, the Federal Register of Legislation is taken as being '*a complete and accurate record of all registered Acts*'.

The Federal Register of Legislation, which is located at www.legislation.gov.au, lists the date of Royal Assent for the Corporations Act as 28 June 2001.

Section 24A of the FOI Act

Section 24A of the FOI Act provides:

Document lost or non-existent

- (1) 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:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

For the reasons outlined above, I am satisfied that ASIC is not in possession of a document that explicitly records evidence of the Corporations Act having received the Royal Assent pursuant to section 58 of the Constitution. As such, I have decided to refuse your request pursuant to section 24A(1)(b)(ii) of the FOI Act.

Review rights

In the event that you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Freedom of Information, GPO Box 9827, Brisbane QLD 4001 or by email to xxxxxxxxxx@xxxx.xxx.xx.
2. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the Office of the Australian Information Commissioner (OAIC) for a review of my decision under section 54N of the FOI Act. You may contact the OAIC by post at GPO

Box 5218 Sydney NSW 2001, by email at xxxxxxxx@xxxx.xxx.xx or by telephone on 1300 363 992

Right to complain

3. You may lodge a complaint with the OAIC in relation to the conduct of ASIC in the handling of this request. You may contact the OAIC as described above.

Please contact me via return email if you have any questions.

Yours sincerely



Benjamin Ackhurst
Freedom of Information Officer
(Authorised decision-maker pursuant to subsection 23(1) of the FOI Act)