

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 113

MINUTE No. 6 of 2007 - Parliamentary Secretary to the Minister for Finance and Administration

Subject: *Public Works Committee Amendment Regulation 2007 (No. 1)*

Public Works Committee Act 1969

The *Public Works Committee Act 1969* (the PWC Act) established the Public Works Committee to inquire into and report on public works referred to it by the Parliament. A public work is a work that is proposed to be carried out by or for the Commonwealth and for which moneys are appropriated by Parliament.

Section 40 of the PWC Act provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by that Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Subsection 6A(1) of the PWC Act advises that the Act applies to every authority of the Commonwealth. However, subsection 6A(3) provides that where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with other bodies, the Governor-General may make regulations declaring that the Act does not apply to that authority.

The purpose of the proposed Regulations is to exempt ASC Pty Ltd (ASC) and its subsidiaries from the provisions of the PWC Act.

ASC (formerly Australian Submarine Corporation) was established in 1987 as a majority privately owned entity, and remained in majority private ownership until the Commonwealth assumed 100% ownership in October 2000. The PWC Act did not apply to ASC until the Commonwealth assumed control in 2000 and the opportunity was not taken up to exempt it from the PWC Act at that time.

ASC is subject to the *Commonwealth Authorities and Companies Act 1997* as the Commonwealth currently owns 100% of the shares. It operates, and has always operated, as a fully corporatised commercial entity independent from the Department of Defence. It is not in receipt of any Government moneys other than on an arms length, fee for service basis.

The main activities of ASC are derived from highly competitive tender processes. It routinely competes with the private sector which is not subject to the PWC Act. The PWC Act requires that all public works for the Commonwealth which are estimated to cost more than \$15 million be referred to the Public Works Committee and shall not be commenced unless, after the report of the Committee has been presented to both Houses of the Parliament, the House of Representatives has resolved that it is expedient to carry out the work. ASC could be disadvantaged compared to its competitors if it is subject to these administrative requirements. The proposed Regulations would remove this potential disadvantage.

The Government intends to return ASC to full private ownership with the sale likely to be completed in the second half of 2008. Once privatised, the PWC Act will cease to apply to ASC.

The Regulations will substitute the table in Schedule 3 to the *Public Works Committee Regulations 1969*, which lists Commonwealth authorities that have been exempted under subsection 6A(3) of the PWC Act, with a new table including ASC and its wholly-owned subsidiaries.

The PWC Act specifies no condition that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Regulations will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence on the day after they are registered on the Federal Register of Legislative Instruments.