



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 57

Notification of rights of review

Introductory and general topics

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From 5 July 2007, this document may be referred to as Regulatory Guide 57 (RG 57) or Practice Note 57 (PN 57). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 57.1) or their practice note number (e.g. PN 57.1).

Headnotes

Decisions; notification; rights of review; Administrative Appeals Tribunal; Takeovers Panel; s244A of the ASIC Act; s655B and 1317D of the Corporations Act; 236(8) of the Life Insurance Act; s189(7) and 190(2) of the Retirement Savings Accounts Act; s344(8) and 345(2) of the Superannuation Industry (Supervision) Act; s27A of the Administrative Appeals Tribunal Act.

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Purpose

RG 57.1 Section 244 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), s1317B of the *Corporations Act 2001*, s236(8) of the *Life Insurance Act 1995*, s189(7) of the *Retirement Savings Accounts Act 1997* and s344(8) of the *Superannuation Industry (Supervision) Act 1993* confer jurisdiction on the Administrative Appeals Tribunal (AAT) to review certain decisions made by ASIC. There are differing obligations imposed on ASIC with respect to notification of rights of review to the AAT.

RG 57.2 Section 656A of the *Corporations Act* confers jurisdiction on the Takeovers Panel (the Panel) to review certain decisions made by ASIC to grant exemptions or modifications under s655A and s673 of the *Corporations Act*.

RG 57.3 The purpose of this guide is to assist ASIC officers to comply with the obligations imposed with respect to notification of rights of review and the public to better understand the relevant provisions.

- Part 1 deals with the obligations under s244A of the *ASIC Act* and the s1317D of the *Corporations Act* to notify of rights of review to the AAT.

See RG 57.4–RG 57.19.

- Part 2 deals with the obligations imposed under the *Life Insurance Act*, the *Retirement Savings Accounts Act* and the *Superannuation Industry (Supervision) Act* to notify of rights of review to the AAT.

See RG 57.20–RG 57.44.

- Part 3 deals with ASIC's obligation under the *Corporations Act* to notify of rights of review to the Panel.

See RG 57.45–RG 57.46.

Part 1 — Notification under the ASIC Act and the Corporations Act of rights of review to the AAT

RG 57.4 Section 244A of the ASIC Act and s1317D of the Corporations Act require ASIC to take such steps, as are reasonable in the circumstances, to give each person whose interests are affected by a decision which is reviewable by the AAT notice of:

- (a) the making of the decision; and
- (b) the person's right to have the decision reviewed by the AAT.

RG 57.5 The AAT's jurisdiction to review decisions made by ASIC under the ASIC Act is limited to certain specified decisions (see s244(2)). The AAT's jurisdiction to review decisions of ASIC made under the Corporations Act is broader as it is not confined to specified decisions (see s1317B of the Corporations Act). There are, however, a number of decisions which are specifically excluded (see s1317C of the Corporations Act).

RG 57.6 "Decision" has the same meaning as it has in the *Administrative Appeals Tribunal Act 1975* (AAT Act) (see s244(1) of the ASIC Act and s1317A of the Corporations Act). In determining whether a "decision" is reviewable the AAT has followed the approach of the High Court in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.

When to notify

RG 57.7 ASIC's obligation under these sections to notify persons affected of their right to seek review by the AAT does not apply in some circumstances. ASIC is not required to give notice if ASIC considers that giving notice to the person or persons is not warranted having regard to:

- (a) the cost of giving notice to the person or persons; and
- (b) the way in which the interests of the person or persons are affected.

RG 57.8 Circumstances where notification would not be required would include where there are numerous persons affected, or the persons are affected in an indirect way.

RG 57.9 If ASIC does not notify a person to whom notice should have been given, the validity of the decision is not affected. However, the AAT will consider the fact that ASIC has not notified any such person when it is deciding (under s29(6) of the AAT Act) whether to accept a late application for review.

Content of the notice

RG 57.10 ASIC officers should normally use either Pro Forma 89 *Notification for reviewable decisions* [PF 89] or Information Sheet *ASIC decisions — your rights* [INFO 1100] as the standard form of notification of rights of review.

RG 57.11 While the sections do not require ASIC to advise of rights to complain to the Commonwealth Ombudsman or to seek access to documents under the *Freedom of Information Act* ASIC considers that it is appropriate to draw the person's attention to their rights in this regard. (See Pro Forma 89 *Notification for reviewable decisions* [PF 89] or ASIC's information sheet *ASIC decisions — your rights* [INFO 9]). See RG 57.58 for the contact details of the Ombudsman.

How to notify

ASIC to notify in writing

RG 57.12 ASIC can choose whether to advise affected persons in writing or in some other manner. However, staff should normally notify affected persons in writing. Pro Forma [PF 89] or ASIC's information sheet [INFO 1100] would usually be used for notifying an individual or entity.

RG 57.13 Many ASIC decisions are made by way of instrument, and many of those instruments are required to be published in the *Gazette*. ASIC publishes a standard notice of possible review rights in the *Gazette*. ASIC considers that publication of a notice in the *Gazette* helps satisfy ASIC's obligations to give notice of rights of review.

RG 57.14 In addition, a standard notice of rights of review also appears on the ASIC website (www.asic.gov.au under "About ASIC") and at the introduction to the Instruments and Class Orders section in the *ASIC Digest*. This notification also helps to satisfy ASIC's obligations in this regard.

Who to notify

RG 57.15 As noted above, ASIC must take steps that are reasonable in the circumstances to give notice to *each person whose interests are affected* by a reviewable decision. In some circumstances, the person most directly affected is easy to determine (for example, the director in respect of whom s206F proceedings have been commenced). However, depending on the nature and effect of the decision, other persons besides the applicant or the direct “beneficiary” of a decision may also be entitled to be notified.

RG 57.16 The obligation to notify does not mean that each individual affected must receive a separate personal notice. ASIC takes the view that in some instances it is appropriate to rely only on the standard notices in the *Gazette* and *ASIC Digest* (see RG 57.13 and RG 57.14 above).

RG 57.17 Also, as noted above, even if a person is affected the obligation to notify may not arise if the interest is affected in an indirect way or the cost of notifying would be too high.

Application for relief — standard requirements

RG 57.18 Applicants for relief should be asked to provide details of persons who, to their knowledge, are likely to be affected by acceptance, in full or in part, or rejection of their application for relief.

RG 57.19 This information will assist ASIC to determine: who, in addition to the applicant, may be affected by the decision; whether it is reasonably practicable for ASIC to notify affected persons; and, if so, the manner in which notification should occur.

Part 2 — Notification under the Life Insurance Act, Retirement Savings Accounts Act and the Superannuation Industry (Supervision) Act of rights of review to the AAT

RG 57.20 ASIC has been conferred with certain functions and powers under the *Life Insurance Act*, the *Retirement Savings Accounts Act* and the *Superannuation Industry (Supervision) Act* (see s12A of the ASIC Act). Certain decisions made by ASIC under these Acts may be reviewed by the AAT.

Life Insurance Act

RG 57.21 The AAT's jurisdiction to review decisions made by ASIC under the *Life Insurance Act* is limited to certain specified decisions (see s236(1) and (8) of the *Life Insurance Act*).

RG 57.22 Under s236(2) of the *Life Insurance Act* a "person affected by a reviewable decision" made by ASIC may ask that the decision be reconsidered. The terms "person affected by the reviewable decision" and "reviewable decision" are defined in s236(1) of that Act.

RG 57.23 The request for reconsideration must be made in writing and given to ASIC within 21 days of receipt of notice of the decision (or a longer period if ASIC allows (see s236(3)). Reasons for requesting the review must also be provided (see s236(4)).

RG 57.24 If ASIC does not notify the person affected of the outcome of the reconsideration within 60 days the decision is deemed to have been confirmed (see s236(5)).

RG 57.25 If ASIC confirms, varies, or revokes the decision it must, in accordance with s236(6), notify the person in writing:

- (a) of the result of the reconsideration; and
- (b) the reasons for confirming, revoking or varying the decision, as the case may be.

RG 57.26 If the outcome of the reconsideration is that the decision is confirmed or varied, ASIC must take such steps as are reasonable in the circumstances to give to the person affected by the reviewable

decision written notice of their right to have the decision reviewed by the AAT (see s27A of the *AAT Act*).¹

RG 57.27 Failure to provide this notice does not affect the validity of the decision (s27A(3) of the *AAT Act*).

RG 57.28 ASIC officers should normally use the text of either Pro Forma [PF 89] or Information Sheet *ASIC decisions — your rights* [INFO 9] as the standard form of notification of rights of review.

Retirement Savings Accounts Act

RG 57.29 The AAT’s jurisdiction to review decisions made by ASIC under the *Retirement Savings Accounts Act* is limited to certain specified decisions (see s16 and s189(7) of the *Retirement Savings Accounts Act*).

RG 57.30 Under s189 of the *Retirement Savings Accounts Act* a “person affected by a reviewable decision” made by ASIC may, if dissatisfied with the decision, ask that the decision be reconsidered.² The term “person affected by a reviewable decision” is defined in s16 of that Act.

RG 57.31 The request for reconsideration must be in writing and the reasons for making the request must be specified (s189(2) and (3)). It must be given to ASIC within 21 days of receipt of notice of the decision (or a longer period if ASIC allows) (see s189(2)).

RG 57.32 If ASIC does not notify the person affected of the outcome of the reconsideration within 60 days the decision is deemed to have been confirmed (see s189(5)).

RG 57.33 Section 189(6) of the Act provides that if ASIC confirms, varies, or revokes the reviewable decision it must notify the person in writing:

(a) of the result of the reconsideration; and

¹ Section 237 of the *Life Insurance Act* specifies the constitution and procedures of the AAT upon its review. Among other things, that Act requires that the hearing be held in private (see s237(5)).

² Under s190(1) of the *Retirement Savings Accounts Act*, if ASIC gives written notice to the affected person that the reviewable decision has been made, it must include a statement to the effect that the person may, if dissatisfied with that decision, seek reconsideration under s189(1) of the Act and further, that if after reconsideration the decision is confirmed or varied they may make an application to the AAT for review. Failure to provide this notice does not affect the validity of the decision (see s190(3)).

(b) the reasons for confirming, revoking or varying the decision, as the case may be.

RG 57.34 ASIC must also, if the outcome of the reconsideration is that the decision is confirmed or varied, notify the person affected that if they are dissatisfied they may, subject to the AAT Act, apply to the AAT for review (s190(2) of the *Retirement Savings Accounts Act*).

RG 57.35 Failure to provide this notice does not affect the validity of the decision (s190(3)).

RG 57.36 ASIC officers should normally use the text of either Pro Forma [PF 89] or Information Sheet *ASIC decisions — your rights* [INFO 9] as the standard form of notification of rights of review.

Superannuation Industry (Supervision) Act

RG 57.37 The AAT's jurisdiction to review decisions made by ASIC under the *Superannuation Industry (Supervision) Act* is limited to certain specified decisions (see s10 and s344(8) of the *Superannuation Industry (Supervision) Act*).

RG 57.38 Under s344(1) of the *Superannuation Industry (Supervision) Act* a person who is affected by a reviewable decision may, if dissatisfied with the decision, ask ASIC to reconsider the decision.³ Sections 10 and 344(12) define "person affected".⁴

RG 57.39 The request for reconsideration must be in writing and the reasons for making the request must be specified (s344(2) and (3)). The request must be given to ASIC within 21 days of receipt of notice of the decision (or a longer period if ASIC allows) (see s344(2)).

RG 57.40 If ASIC does not notify the person affected of the outcome of the reconsideration within 60 days the decision is deemed to have been confirmed (see s344(5)).

³ Under s345(1) of the *Superannuation Industry (Supervision) Act*, if ASIC gives written notice to the affected person that the reviewable decision has been made, it must include a statement to the effect that the person may, if dissatisfied with that decision, seek reconsideration under s344(1) of the Act and further, that if after reconsideration the decision is confirmed or varied they may make an application to the AAT for review. Failure to provide this notice does not affect the validity of the decision (see s345(3)).

⁴ For example, the person affected may be, in some instances, the trustee of the superannuation entity that is affected by the decision.

RG 57.41 Section 344(6) of the Act provides that if ASIC confirms, varies, or revokes the decision it must notify the person in writing:

- (a) of the result of the reconsideration; and
- (b) the reasons for confirming, revoking or varying the decision, as the case may be.

RG 57.42 ASIC must also, if the outcome of the reconsideration is that the decision is confirmed or varied, notify the person affected that if they are dissatisfied they may, subject to the *AAT Act*, apply to the AAT for review (s345(2)).⁵

RG 57.43 Failure to provide this notice does not affect the validity of the decision (s345(3)).

RG 57.44 ASIC officers should normally use the text of either Pro Forma [PF 89] or Information Sheet *ASIC decisions — your rights* [INFO 9] as the standard form of notification of rights of review.

⁵ Subsection 344(11) of the *Superannuation Industry (Supervision) Act* specifies that the AAT's hearing must be held in private.

Part 3 — Notification under the Corporation Act of rights of review to the Panel

RG 57.45 Section 656A of the Corporations Act confers jurisdiction on the Panel to review the following decisions made by ASIC:

- (a) a decision under s655A of the Corporations Act to exempt from or modify Chapter 6 of the Corporations Act; and
- (b) a decision under s673 of the Corporations Act in relation to securities of the target of a takeover bid during the bid period.

RG 57.46 An application to the Panel for review may be made by “any person whose interests are affected by the decision” (s656A(2)). The term “decision” has the same meaning as it has in the *AAT Act* (s656A(1)). There is no definition of the meaning “person whose interests are affected”.

RG 57.47 Under s655B of the Corporations Act ASIC is required to take such steps, as are reasonable in the circumstances, to give each person whose interests are affected by a decision under s655A notice of:

- (a) the making of the decision; and
- (b) the person’s right to have the decision reviewed by the Panel.

RG 57.48 Section 655B does not impose an obligation on ASIC to give notice of rights of review to the Panel when ASIC has made a reviewable decision under s673. However, ASIC considers that notice of rights of review should generally be given in circumstances where it has made a reviewable decision under s673.

When to notify

RG 57.49 ASIC’s obligation under s655B of the Corporations Act to notify persons affected of their right to seek review by the Panel does not apply in some circumstances. ASIC is not required to give notice if ASIC considers that giving notice to the person or persons is not warranted having regard to:

- (a) the cost of giving notice to the person or persons; and

(b) the way in which the interests of the person or persons are affected.

RG 57.50 Circumstances where notification would not be required would include where there are numerous persons affected, or the persons are affected in an indirect way.

RG 57.51 If ASIC does not notify a person to whom notice should have been given, the validity of the decision is not affected (s655B(3)).

How to notify

ASIC to notify in writing

RG 57.52 ASIC can choose whether to advise affected persons in writing or in some other manner (s655B(1)). However, staff should normally notify affected persons in writing. ASIC officers may use the text of either Pro Forma [PF 89]) or Information Sheet *ASIC decisions — your rights* [INFO 1100], with such amendments as may be necessary, as the standard form of notification.

RG 57.53 In accordance with s655A(5) and s673(5) of the Corporations Act an exemption or declaration made by ASIC under s655A(1) or s673(1) must be published in the *Gazette*. As noted above, ASIC publishes a standard notice of possible rights of review in the *Gazette*. In addition, a standard notice of rights of review also appears on the ASIC website (under “About ASIC”) and at the introduction to the Instruments and Class Orders section in the *ASIC Digest*. ASIC considers that this notification helps satisfy ASIC’s obligations to give notice of rights of review to the Panel.

Who to notify

RG 57.54 As noted in RG 57.49, ASIC must take steps that are reasonable in the circumstances to give notice to *each person whose interests are affected* by a reviewable decision. In some circumstances, the person most directly affected is easy to determine; in other instances it will more difficult. For example, depending on the nature and effect of the exemption or declaration made under s655A, persons other than the applicant may be affected and therefore entitled to be notified.

RG 57.55 The obligation to notify does not mean that each person affected must receive a separate personal notice. ASIC takes the view that in some instances it is appropriate to rely only on the standard notices in the *Gazette* and *ASIC Digest* (see RG 57.13–RG 57.14 and RG 57.53).

RG 57.56 See too RG 57.49–RG 57.50 for discussion of instances where notice is not required.

Part 4 — Contact details

Administrative Appeals Tribunals

RG 57.57 Set out below are the contact details of the AAT.

Queensland and for the Northern Territory

Level 4	Tel: (07) 3361 3000
Commonwealth Law Courts	Fax: (07) 3361 3001
Cnr Tank St & North Quay	DX 253
Brisbane Qld 4000	

Australian Capital Territory

Level 4	Tel: (02) 6243 4611
Canberra House	Fax: (02) 6247 0962
40 Marcus Clarke Street	DX 5727 Canberra
Canberra City ACT 2600	

New South Wales

Level 7	Tel: (02) 9391 2400
City Centre Building	Fax: (02) 9283 4881
55 Market Street	DX 10200 Sydney Stock Exchange
Sydney NSW 2000	

South Australia

Level 11	Tel: (08) 8201 0600
Chesser House	Fax: (08) 8201 0610
91 Grenfell Street	
Adelaide SA 5000	

Tasmania

Ground Floor	Tel: (03) 6232 1712
Commonwealth Law Courts	Fax: (03) 6232 1701
3941 Davey Street	DX 122 Hobart
Hobart Tas 7000	

Victoria

Level 16
HWT Tower, Southgate 40 City
Road
Southbank Vic 3006

Tel: (03) 9282 8444
Fax: (03) 9282 8480
DX 108 Melbourne

Western Australia

Level 8
The Quadrant Building
1 William St
Perth WA 6000

Tel: (08) 9327 7200
Fax: (08) 9327 7299

Postal address

GPO Box 9955 in each capital city

Office hours

All registries are open 9.30am to 1pm and 2pm to 4pm.

Inquiries

Information may be obtained by calling at any of the above addresses, by writing to GPO Box 9955 in any capital city or by telephoning any of the numbers listed. You may also telephone the AAT on 1300 366 700 (for the cost of a local call) and you will be directed to your nearest registry.

Commonwealth Ombudsman

RG 57.58 Set out below are the contact details of the Commonwealth Ombudsman.

Victoria

Level 10
Casselden Place
2 Lonsdale Street
Melbourne Vic 3006

Tel: (03) 9654 7355
Fax: (03) 9654 7949

Queensland

Level 25,
288 Edward Street
Brisbane Qld 4000

Tel: (07) 3005 7000
Fax: (07) 3229 4010

Australian Capital Territory

Level
1 Farrell Place
Canberra City ACT 2600

Tel: (02) 6276 0111
Fax: (02) 6249 7829

New South Wales

Level 7, North Wind
Sydney Central
477 Pitt Street
Sydney NSW 2000

Tel: (02) 9218 3000
Fax: (02) 9211 4402

South Australia

50 Grenfell Street
Adelaide SA 5000

Tel: (08) 8226 8616
Fax: (08) 8226 8618

Tasmania

Ground Floor
99 Bathurst Street
Hobart Tas 7000

Tel: (03) 6233 6217
Fax: (03) 6233 8966

Western Australia

17th Floor
St Martin's Tower
44 St George's Terrace
Perth WA 6000

Tel: (08) 9220 7541
Fax: (08) 9221 4381

Northern Territory

Level 1
NT House
Cnr Bennett and Mitchell Streets
GPO Box 1344

Tel: (08) 8999 1818
Fax: (08) 8999 1828

Darwin NT 0801

Inquiries

Inquiries may be made by calling 1300 362 072 for the cost of a local call. Complaints to the Ombudsman may be made in writing or by telephone. The Ombudsman also has a complaints form which can be used.

Takeovers Panel

RG 57.59 Set out below are the contact details of the Panel.

Nauru House
Level 47
80 Collins Street
Melbourne VIC 3000

Tel: (03) 9655 3500
Fax: (03) 9655 3511