

Corporations (Fees) Regulations 2001 2001 No. 194

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 194

Issued by the Minister for Financial Services and Regulation

Corporations (Fees) Act 2001

Corporations (Fees) Regulations 2001

Sections 5 and 6 of the *Corporations (Fees) Act 2001* ('the Fees Act') provides that the regulations to the Act may prescribe fees for chargeable matters under the Corporations Act 2001. Section 8 of the Act provides that the Governor-General may make regulations for the purposes of sections 5 and 6.

The purpose of the Regulations is to:

- * re-make regulations prescribing fees for chargeable matters under the *Corporations Act 2001* that had previously been prescribed in the Corporations (Fees) Regulations 1990; and
- * update terminology and references in cases where the relevant terminology and references differ from those used in the Corporations (Fees) Regulations 1990.

The amount of the prescribed fees are the same as those imposed under the Corporations (Fees) Regulations 1990.

The Regulations support the package of new corporations legislation, including the Act, that was enacted in light of recent High Court decisions that cast doubt on the constitutional validity of the existing regulatory regime under the Corporation Law. The decision in *Re Wakim; ex parte McNally* rendered the cross-vesting arrangements under the Corporations Law invalid to the extent that they purported to confer State jurisdiction on federal courts. In *The Queen v Hughes*, the High Court decided that the Commonwealth cannot authorise its officers or authorities to undertake a function under State law in some circumstances, casting doubt on the ability of Commonwealth authorities or officers to exercise certain powers and functions under the corporations legislation.

These decisions resulted in uncertainty and inefficiency in relation to Australia's system of national corporate regulation. Following an agreement negotiated with the States and Territories, the Commonwealth passed new legislation supported by both its existing legislative power under section 51 of the Constitution and references from the States for the purposes of section 51 (xxxvii) of the Constitution.

The Regulations commence on the same day as the Fees Act.

CORPORATIONS (FEES) REGULATIONS 2001

Background

Recent decisions of the High Court have cast doubt on the constitutional foundations of important elements of the Corporations Law scheme.

* The decision in *Re Wakim; ex parte McNally* (1999) 198 CLR 511 rendered cross-vesting arrangements invalid to the extent that they purported to confer State jurisdiction on federal courts.

* In *The Queen v Hughes* (2000) 74 ALJR 802; 171 ALR 155, the High Court decided that the Commonwealth cannot authorise its officers or authorities to undertake a function under State law involving the performance of a duty (particularly a function having the potential to adversely affect the rights of individuals) unless the function has a sufficient nexus with a head of Commonwealth legislative power under the Constitution. As the limits of Commonwealth legislative power are uncertain, the decision has cast doubt on the ability of Commonwealth authorities or officers to exercise certain powers and functions under the corporations legislation. This has resulted in uncertainty and inefficiency in relation to Australia's system of national corporate regulation.

2. These problems have been addressed by references from the States for the purposes of section 51 (xxxvii) of the Commonwealth Constitution. That provision enables the Commonwealth Parliament to legislate with respect to matters referred to it by the State parliaments. Suitable references have been enacted by all the States which have, combined with existing legislative power, enabled the Commonwealth Parliament to enact the corporations legislation as a federal law.

3. The *Corporations Act 2001* is to replace the *Corporations Act 1989* and the Corporations Law of the Capital Territory, and the corresponding legislation of the States and the Northern Territory, as the statutory basis for the formation of companies, corporate regulation and the regulation of the securities and futures industries. Similarly, the *Corporations (Fees) Act 2001* ('the Fees Act') has been enacted to replace the fee-setting arrangements for the Corporations Law. In effect, the new legislation re-enacts the provisions of the corporations legislation concerning the imposition of fees and charges in the form of taxation legislation that complies with Commonwealth constitutional requirements.

The Corporations (Fees) Regulations 2001

4. The new legislation will for practical purposes restore the regulatory environment that existed before the High Court decisions of *Hughes* and *Wakim*. While the legislation also corrects a number of existing anomalies and updates the drafting style, it does not involve substantive policy changes.

5. The Regulations remain substantially unchanged from the *Corporations (Fees) Regulations 1990*. Accordingly, this Explanatory Statement is limited to explaining the differences between in the Regulations and the *Corporations (Fees) Regulations 1990*. Explanatory material for the Corporations (Fees) Regulations 1990 is to be found in the Explanatory Statement for the instrument that created or amended those regulations.

Regulation 1A: Commencement

6. Regulation 1A provides that the Regulations commence on the same day as the Fees Act.

Regulation 1B: Definition

7. Regulation 1B provides that "Act" in these Regulations means the Corporations Act 2001.

Regulation 3: Prescribed fees

8. Regulation 3 provides that the fee prescribed under sections 5 and 6 of the Fees Act for a chargeable matter set out in Schedule 1 to the Regulations is the fee specified in Schedule 1 for that matter.

Regulation 4: Repeal of old Corporations (Fees) Regulations

9. Regulation 4 repeals the Corporations (Fees) Regulations 1990 in so far as they are preserved by section 9 of the Fees Act. As the regulations are being remade with the appropriate updating, it is not necessary to rely on the regulations saved by section 9.