

Corporations (Review Fees) Amendment Regulations 2003 (No. 1) 2003 No. 370

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 370

Issued by the Authority of the Parliamentary Secretary to the Treasurer

Subject - *Corporations (Review Fees) Act 2003*

Corporations (Review Fees) Amendment Regulations 2003 (No. 1)

Under amendments to the *Corporations Act 2001* (the Corporations Act) and the *Corporations (Fees) Act 2001* (the Corporations (Fees) Act) made by the *Corporations Legislation Amendment Act 2003* (the Corporations Legislation Amendment Act) and the *Corporations (Fees) Amendment Act 2003*, annual returns lodged with the Australian Securities and Investments Commission (ASIC) by companies and registered managed investment schemes, amongst others, have been replaced by new information lodgment requirements to assist ASIC to maintain an accurate database in relation to the companies and registered schemes it regulates. The Corporations Act previously required all Australian companies and registered schemes to pay a fee on lodging an annual return with ASIC by 31 January each year.

The *Corporations (Review Fees) Act 2003* (the Act) provides for an annual review fee with respect to the review date of a company or registered scheme (usually the anniversary of its registration with ASIC). The annual review fee replaces the annual return lodgment fee, which existed prior to the commencement on 1 July 2003 of the Corporations Legislation Amendment Act.

Section 8 of the Act provides that the Governor-General may make regulations for the purposes of the Act. Subsection 6(1) of the Act allows review fees to be prescribed by specifying an amount of up to \$10,000. Section 5 of the Act provides that the regulations may prescribe fees in relation to review dates for companies, registered schemes and certain natural persons and entities (the fees are imposed as taxes).

In conjunction with the abolition of company annual returns, the Act permits regulations to prescribe review fees in respect of certain review dates. The due dates for review fees imposed on companies and other entities, including registered schemes, are imposed under subsection 1351(3) of the Corporations Act.

The *Corporations (Review Fees) Regulations 2003* (the Principal Regulations) prescribe review fees in respect of review dates for the types of companies listed in Schedule 1 to those Regulations and for registered schemes.

The purpose of the Regulations is to amend the Principal Regulations to prescribe fees for the late payment of review fees made in respect of review dates for the types of companies listed in the new Schedule 1 to the Principal Regulations and for registered schemes.

Allowing for the CPI increase effected by the *Corporations (Fees) Amendment Regulations 2003 (No. 2)*, the current review fees are commensurate with the annual return lodgment fees previously imposed under item 7 of Schedule 1 to the *Corporations (Fees) Regulations 2001*.

The late payment fees are commensurate with fees prescribed for late lodgment of a document with ASIC under item 28 of Schedule 1 to the *Corporations (Fees) Regulations 2001*, as amended by the *Corporations (Fees) Amendment Regulations 2003 (No. 2)*.

The Corporations Agreement between the States, the Northern Territory and the Commonwealth, which reflects the constitutional basis of the national corporations legislation, requires the Commonwealth to consult members of the Ministerial Council for Corporations before making amendments to regulations made under the Corporations Act and the Corporations (Fees) Act. Members of the Ministerial Council for Corporations have been consulted about the Regulations. The approval of the Ministerial Council is not required for amendments to regulations relating to fees.

Details of the Regulations are in the Attachment.

The Regulations commence on 1 January 2004.

Authority: Section 8 of the *Corporations (Review Fees) Act 2003*

ATTACHMENT

DETAILS OF THE *CORPORATIONS (REVIEW FEES) AMENDMENT REGULATIONS 2003 (No. 1)*

Regulation 1: Name of Regulations

Regulation 1 provides that the Regulations are known as the *Corporations (Review Fees) Amendment Regulations 2003 (No. 1)*.

Regulation 2: Commencement

Regulation 2 provides that the Regulations commence on 1 January 2004.

Regulation 3: Amendment of *Corporations (Review Fees) Regulations 2003*

Regulation 3 provides that Schedule 1 to the Regulations amends the *Corporations (Review Fees) Regulations 2003*.

Schedule 1: Amendments

Item 1 of Schedule 1 to the Regulations replaces the existing regulation 4 (Review fees) with a new regulation 4.

New subregulation 4(1) prescribes the fees mentioned in Part 1 of the new Schedule 1 to the Regulations in relation to review dates for a company or registered scheme. New subregulation 4(1) is, in substance, the same as existing subregulation 4(1).

New subregulation 4(2) prescribes the fees mentioned in Part 2 of the new Schedule 1 in relation to review dates for a company or a registered scheme in the circumstances mentioned in Part 2 of the new Schedule 1.

New subregulation 4(3) prescribes the amounts mentioned in a Part of the new Schedule 1 as review fees for the purposes of subsection 6(1) of the *Corporations (Review Fees) Act 2003* (the Act). New subregulation 4(3) is, in substance, the same as existing subregulation 4(2).

Subsection 6(1) of the Act provides that the regulations may prescribe review fees in relation to the review dates of companies and other entities by specifying an amount not exceeding \$10,000 as the fee. Amounts prescribed by the regulations are subject to regulation 5, which provides that no fee is prescribed for the second review date in a financial year.

Item 2 of Schedule 1 to the Regulations replaces the existing Schedule 1 to the Regulations with a new Schedule 1 in two Parts. New Part 1 of the new Schedule 1 is, in substance, the same as the existing Schedule 1.

Part 2 of the new Schedule 1 imposes a late fee in relation to review dates for a company or registered scheme in the following circumstances:

- where a review fee is paid within one month after the due date for payment of a review fee in relation to the review date for the company or registered scheme.....a fee of \$65;
- where a review fee is paid more than one month after the due date for payment of a review fee in relation to the review date for the company or registered scheme.....a fee of \$270.

