

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 200**

Issued by the authority of the Parliamentary Secretary to the Treasurer

*Corporations (Review Fees) Act 2003*

*Corporations (Review Fees) Amendment Regulations 2007 (No. 1)*

Section 8 of the *Corporations (Review Fees) Act 2003* (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

Paragraphs 5(1)(a) and 5(1)(b) of the Act provides that regulations may prescribe fees in relation to the review dates of companies and registered schemes, respectively.

Paragraph 1351(4)(b) of the *Corporations Act 2001* (the Corporations Act) provides that a fee imposed under the Act is not payable to the Commonwealth in relation to a review date in a year if the fee in respect of the review date has been paid in a previous year in accordance with regulations made under the Act.

The Regulations amend the *Corporations (Review Fees) Regulations 2003* to prescribe amounts to be payable in respect of review dates for public companies, proprietary companies, special purpose companies and registered schemes. Payments of the amounts prescribed eliminate the obligation to pay fees in respect of review dates for a period of ten years from the date of payment.

The purpose of the Regulations is to reduce transactions costs for businesses that are required to pay review fees for entities registered with the Australian Securities and Investments Commission. A single payment made once every ten years is an option for entities that find an annual payment to be an unnecessary administrative burden. The amounts to be paid cover a ten year period and have been appropriately discounted to allow for foregone interest on monies paid upfront.

The amounts prescribed for upfront payment of annual review fees are \$7,700 for a public company or a registered scheme, \$1,600 for a proprietary company and \$300 for a special purpose company.

Under the Corporations Agreement 2002, the State and Territory Governments referred their constitutional powers with respect to corporate regulation to the Commonwealth. Under subclauses 506(1) and 507(2) of the Corporations Agreement, the Commonwealth is required to consult with and receive the approval of at least three State and Territory Ministers of the Ministerial Council for Corporations (the Council) before making a regulation under the national law. The Commonwealth has received approval of the Council for the Regulations. In addition, under subclause 511(3), the Commonwealth is required to consult with the Council as to whether proposed regulations should be exposed for public comment for between one and three months. The Commonwealth has received the approval of the Council to waive the public disclosure period for the Regulations.

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

The Regulations commence on commencement of the *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007*.

Details of the Regulations are set out in the Attachment.

**ATTACHMENT****Details of the Corporations (Review Fees) Amendment Regulations 2007 (No. 1)****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Corporations (Review Fees) Amendment Regulations 2007 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on commencement of the *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007*.

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

This regulation provides that the *Corporations (Review Fees) Regulations 2003* (the Principal Regulations) are amended as set out in Schedule 1.

**Schedule 1 – Amendments****Item [1] – Subregulation 4(1)**

This item substitutes a subregulation 4(1) with new subregulations 4(1) and 4(1A) to prescribe review fees on an annual basis under Part 1 of Schedule 1. Paragraph (a) of subregulation 4(1A) prescribes fees to be paid upfront under Part 1A of Schedule 1. Paragraph (b) of subregulation 4(1A) provides that a company or registered scheme that pays the fee mentioned Part 1A of Schedule 1 is not required to pay another review fees for a period of ten years.

**Item [2] – Schedule 1, Part 1, heading**

This item substitutes the heading ‘Annual fees’ for the existing heading ‘Fees’ for Part 1 of Schedule 1 to the Principal Regulations. This substitution allows for the new distinction to be created between the annual payment of review fees, under Part 1 of Schedule 1, and the upfront payment of review fees, under Part 1A of Schedule 1.

**Item [3] – Schedule 1, after Part 1**

This item inserts a new Part 1A into Schedule 1 to the Review Fees Regulations. Part 1A of the Schedule prescribes upfront fees for public companies, proprietary companies, special purpose companies and registered schemes. Item 101 prescribes an amount of \$7,700 for a public company. Item 102 prescribes an amount of \$1,600 for a proprietary company. Item 103 prescribes an amount of \$300 for a special purpose company. Item 104 prescribes an amount of \$7,700 for a registered scheme.

**Item [4] – Schedule 1, Part 2, table, Item 201, column 2**

This item inserts a reference to new Part 1A of Schedule 1 into item 201 of Part 2 of the Schedule to provide for a late fee of \$65 being prescribed for a payment of upfront fees that is late by less than one month.

**Item [5] – Schedule 1, Part 2, table, item 202, column 2**

This item inserts a reference to new Part 1A of Schedule 1 into item 202 of Part 2 of the Schedule to provide for a late fee of \$270 being prescribed for a payment of upfront fees that is more than one month late.