

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 43

Subject - *National Consumer Credit Protection (Fees) Act 2009*

National Consumer Credit Protection (Fees) Regulations 2010

The *National Consumer Credit Protection (Fees) Act 2009* (the Fees Act) allows for the imposition of fees for things done under the *National Consumer Credit Protection Act 2009* (the Credit Act) and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (the Transitional Act).

Section 10 of the Fees Act provides that the Governor-General may make regulations for the purposes of sections 5, 6, 7 and 8.

The purpose of the Regulations is to prescribe amounts payable for chargeable matters under the Fees Act.

Section 231 of the Credit Act provides that fees imposed under the Fees Act are payable to the Commonwealth. These fees may be collected by the Australian Securities and Investments Commission (ASIC), on behalf of the Commonwealth. Section 235 of the Credit Act gives the Commonwealth discretion to reduce, waive or refund fees in a particular case, or classes of cases, that would otherwise be payable under the Credit Act.

Section 4 of the Fees Act defines the activities that constitute chargeable matters. Sections 5 and 6 of the Fees Act provide that regulations may prescribe fees for chargeable matters under the Credit Act. Section 7 of the Fees Act allows for different fees for electronic compliance and section 8 of the Fees Act allows for different fees for number of representatives of person by whom a fee for chargeable matter is payable.

Schedules 1 and 2 to the Regulations prescribe fees for chargeable matters under the Fees Act. This fee structure promotes certainty and simplicity, whilst also encouraging the provision of information to maintain the integrity of registers and support compliance with the Credit Act.

Part 1 of Schedule 1 prescribes a method for calculating the amount of fees for certain chargeable matters. Part 2 of Schedule 1 prescribes specified amounts for fees for certain chargeable matters. Part 3 of Schedule 1 alters fees in Parts 1 and 2 under certain circumstances. Schedule 2 prescribes fees for other chargeable matters relating to the inspection of a document or register maintained by ASIC.

Details of the Regulations are set out in the Attachment.

The Fees Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

These Regulations commence on the same day as item 2 of the table in subsection 2(1) of the Fees Act which is expected to be 1 April 2010.

The Minute recommends that Regulations be made in the form proposed.

Authority: Section 10 of the
*National Consumer Credit
Protection (Fees) Act 2009*

ATTACHMENT

DETAILS OF THE NATIONAL CONSUMER CREDIT PROTECTION (FEES) REGULATIONS 2010Regulation 1 – Name of Regulations

Regulation 1 provides that the name of the Regulations to be the *National Consumer Credit Protection (Fees) Regulations 2010*.

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence on the same day as item 2 of the table in subsection 2(1) of the Fees Act.

Regulation 3 – Definitions

Regulation 3 defines words and expressions that are used in the Regulations.

Regulation 4 – Prescribed fees – chargeable matters in Schedule 1

Regulation 4 sets the amount of fees payable for chargeable matters as permitted under sections 5 and 6 of the Fees Act.

The lodgment of certain applications and notices that support the integrity of registers would attract no fee, while the lodgment of other applications, notices and documents would attract a \$100 fee. The purpose of this fee structure is to promote the reporting of information to ASIC.

Subregulation 4(1) provides that Part 1 of Schedule 1 will illustrate a method for calculating the amount of a fee for chargeable matters mentioned in Part 1. Subregulation 4(2) provides that Part 2 of Schedule 1 will specify an amount for a fee for chargeable matters mentioned in Part 2. Subregulation 4(3) provides that fees worked out in accordance with Part 1 or specified in Part 2 are to be altered as required by Part 3 such as if the applicant is eligible for a streamlined process, the matter is lodged non-electronically, or if the document is lodged late.

Regulation 5 – Prescribed fees – chargeable matters in Schedule 2

Subregulation 5(1) provides that Schedule 2 will specify a fee for other chargeable matters as mentioned in Schedule 2. Subregulation 5(2) provides that fees specified in Schedule 2 will not apply to:

- Commonwealth agencies;
- Commonwealth authorities;
- Commonwealth companies;
- a holder of a licence for a commercial broadcasting or television station;
- the proprietor or publisher of a newspaper that is generally available to the public; or

- inspections of a credit register that ASIC has made available under subsection 214(2) of the Credit Act relating to making credit registers available to the public on its website or by other means.

Schedule 1 – Fees for chargeable matters

Part 1 Fees worked out using a method

Chargeable matters, the method for calculating the related fee, and the provisions under the Credit Act and Transitional Act to which they relate are described in Table 1.1.

Table 1.1 – Fees worked out using a method

Item	Method to calculate fee		Relevant provision of Credit Act or Transitional Act
1.1(a) Lodgment of an application to be licensed	Amount of A	Fee	Subsection 36(1) of the Credit Act
	less than \$100 million	\$450*	
	less than \$200 million	\$1,000	
1.1(b) Lodgment of an annual compliance certificate	\$200 million to less than \$600 million	\$4,000	Subsection 53(1) of the Credit Act
	\$600 million to less than \$1.0 billion	\$8,000	
	\$1.0 billion to less than \$1.4 billion	\$12,000	
	\$1.4 billion to less than \$1.8 billion	\$16,000	
	\$1.8 billion to less than \$2.1 billion	\$20,000	
More than \$2.1 billion	\$21,000		

‘A’ is the sum, in Australian dollars, of:

- the total amount of credit advanced by the applicant or licensee in the preceding financial year;
- the total amount of credit in applications submitted, that have resulted in loans, to credit providers or credit intermediaries by the applicant or licensee in the preceding financial year; and
- the total amount of rent payable by consumers under consumer leases entered into by the applicant or licensee in the preceding financial year
- the total amount of credit assigned to a person in the preceding financial year.

For the purpose of calculating ‘A’, credit is defined by section 5 of the Schedule 1 of the *National Consumer Credit Protection Act 2009* (the National Credit Code) notwithstanding any limitations placed on that definition applied by any other Act. That is, it includes loans not previously regulated by the state-based Uniform Consumer Credit Code such as loans for residential investment properties. In

addition, the amount of credit assigned is the face value of the credit regardless of the resale or purchased value of the credit.

* The \$450 fee for lodgment of licensing applications and annual compliance certificates applies only to sole traders with an amount of 'A' of less than \$100 million.

Example 1.1

In the 2009-10 financial year XYZ Credit Union (XYZ) advanced \$200 million of credit for owner-occupied housing, \$180 million for investment housing, \$50 million in personal loans, and \$100 million in other loans not covered by National Credit Code (Code). It also gave approvals for \$40 million of additional credit card debt. XYZ is seeking to apply for a licence in the 2010-11 financial year.

The fees for XYZ for the 2010-11 financial year will be based on \$470 million in debt advanced by XYZ. As loans to small business are not captured by the Code, they are not included in the fee calculation.

From the table for calculating fees for the lodgment of a licensing application (item 1.1(a) in table 1.1), the fee for XYZ, who advanced \$470 million in credit in 2009-10, will be \$4,000.

Example 1.2

Easy Brokers is a mortgage services firm that provides broking services as well as its own credit products. It holds a license and wishes to lodge an annual compliance certificate so that it can continue to engage in credit activities. Easy Brokers' licensing anniversary is 1 September. Under section 53 of the Credit Act, Easy Brokers must lodge an annual compliance certificate no later than 45 days after its licensing anniversary.

In the 2010-11 financial year Easy Brokers advanced \$40 million of its own credit products, and referred a further \$50 million to other credit providers. The total 'A' value for Easy Brokers is \$90 million. From the table for the fee for the lodgment of an annual compliance certificate (item 1.1(b) in table 1.1), Easy Brokers' would need to pay the minimum fee of \$1,000 in the 2011-12 financial year. The certificate and the fee must be lodged by 15 October 2011.

Part 2 Specified fees

Chargeable matters, the amount specified as the related fee, and the provisions under the Credit Act and Transitional Act to which they relate are described in Table 1.2.

Table 1.2 – Specified Fees

Item	Specified amount	Relevant provision of Credit Act or Transitional Act
2.1 Lodgment of information or an audit report	No fee	Subsection 34(4) of the Credit Act
2.2 Lodgment of a notice to a licensee to provide a statement	No fee	Subsection 39(1) of the Credit Act

Item	Specified amount	Relevant provision of Credit Act or Transitional Act
2.3 Lodgment of an application to have conditions imposed, varied or revoked	\$100	Paragraph 45(2)(b) of the Credit Act
2.4 Lodgment of information under subsection 50(1)	No fee	Subsection 50(1) of the Credit Act
2.5 Lodgment of a notice of authorisation, or a change to, revocation of an authorisation	No fee	Subsection 51(1) of the Credit Act
2.6 Lodgment under 54(1)(a) of the National Credit Act	No fee	Paragraph 54(1)(a) of the Credit Act
2.7 Lodgment of a notice of authorisation, or a change to, revocation of an authorisation	No fee	Section 71 of the Credit Act
2.8 Lodgment of an application for the variation or cancellation of a banning order	\$100	Paragraph 83(2)(b) of the Credit Act
2.9 Lodgment of a trust account statement and trust account audit report	\$100	Subsections 100(1) and (2) of the Credit Act
2.10 Lodgment of an application for relief	\$100	Section 109 of the Credit Act
2.11 Lodgment of an application for relief	\$100	Section 163 of the Credit Act
2.12 Application for an extension of time	No fee	Subsection 37(5), 49(5), 53(1), 101(3), 220(2) or 265(5) of the Credit Act
2.13 Lodgment of an application for relief	\$100	Subsection 6(14) of Schedule 1 to the Credit Act (the National Credit Code)
2.14 Lodgment of an application for relief	\$100	Subsection 6(17) of Schedule 1 to the Credit Act (the National Credit Code)
2.15 Lodgment of an application to be registered	No fee	Subitem 11(1) of Schedule 2 to the Transitional Act

Item	Specified amount	Relevant provision of Credit Act or Transitional Act
2.16 Lodgment of an application to have conditions imposed, varied or revoked	\$100	Paragraph 14(2)(b) of Schedule 2 to the Transitional Act
2.17 Lodgment of a statement	No Fee	Subitem 17(1) of Schedule 2 to the Transitional Act
2.18 Lodgment of information	No Fee	Subitem 18(1) of Schedule 2 to the Transitional Act
2.19 Lodgment of an application to cancel or suspend registration	No Fee	Paragraph 23(1)(a) of Schedule 2 to the Transitional Act
2.20 Lodgment of an application for relief	\$100	Item 41 of Schedule 2 to the Transitional Act
2.21 Lodgment of particulars of a change	No Fee	Section 329 of the Credit Act Subregulation 9(2) of the Credit Regulations
2.22 Lodgment of particulars of a change	No Fee	Section 329 of the Credit Act Subregulation 9(3) of the Credit Regulations
2.23 Lodgment of particulars of a change in control of a licensee	No Fee	Section 329 of the Credit Act Subregulation 9(10) of the Credit Regulations
2.27 Production by ASIC, under a subpoena, of a register mentioned in the definition of chargeable matter in subsection 4(1) of the Fees Act, or a document mentioned in that definition	\$100	Any provision of the Credit Act or Transitional Act
2.28 Lodgment of a document, notice or application under the Credit Act or Transitional Act that is not mentioned in the other items of this Part or in Schedule 2	\$100	Any provision of the Credit Act or Transitional Act

Part 3 Alteration of fees in Part 1 or 2

The circumstances and the alteration to the fees worked out in accordance with Part 1 or specified in Part 2 are listed in Table 1.3. They apply in the order in which they are listed in the table. That is, the alteration for applications lodged by an Authorised Deposit-taking Institution (ADI), if applicable, applies first, the alteration for applications lodged by non-ADIs using a streamlined process, if applicable, applies second etc.

Table 1.3 – Alteration of fees in Part 1 and 2

Circumstance	Alteration
3.1 An application to be licensed lodged by an ADI	The fee worked out in accordance with Part 1 is reduced by 10 per cent
3.2 An application to be licensed lodged by a non-ADI using a streamlined process under section 39 of the Credit Act	The fee worked out in accordance with Part 1 is reduced by 10 per cent
3.3 A chargeable matter is lodged non-electronically	The fee worked out in accordance with Part 1 is increased by 25 per cent; or The fee specified in Part 2 is increased by \$25.

Circumstance	Alteration
3.4 A chargeable matter must be lodged within a particular period and less than 1 month late	The fee worked out in accordance with Part 1 or specified in Part 2 is increased by \$65.
3.5 A chargeable matter must be lodged within a particular period and is 1 month or more late	The fee worked out in accordance with Part 1 or specified in Part 2 is increased by \$270.

Example 3.1

Lisa is an authorised credit representative of Secure Bank. On 1 December 2010 Lisa ends her contract with Secure Bank and no longer provides credit services on its behalf. Under section 71 of the Credit Act, Secure Bank has 10 business days to lodge with ASIC a written notice of this change regarding its credit representatives.

If the notice is received within 10 business days and received electronically, it will be accepted with no fee. If notice is given after the 10 business days a late fee shall be charged. A fee of \$65 will be payable if notice is given within 1 month of the 10th day after the change in credit representative particulars. A fee of \$270 will be payable if notice is given 1 month or more from the 10th day after the change in particulars.

Example 3.2

Per is a licensed mortgage broker. In the 2010-11 financial year he lodged applications with credit providers worth \$40 million. As Per is a sole trader the minimum fee for lodgment of his annual compliance certificate is \$450. However, Per is two months late in lodging his annual compliance certificate. ASIC have advised Per that if he does not lodge the annual compliance certificate soon, they will revoke his licence.

Per wishes to continue to provide credit services and lodges his annual compliance certificate non-electronically the next day. The amount payable by Per will be \$450 for lodgment of his annual compliance certificate, increased first by 25 per cent for non-electronic lodgment (running total \$562.50), then by a further fee of \$270 for being more than one month late, rounded to the nearest whole dollar (50 cents rounds up). Per's fee for the lodgment of his annual compliance certificate will therefore be \$833.

Part 4 Rounding

Where an amount has been

- worked out in Part 1, or
- worked out in Part 1 and altered by Part 3, or

- specified in Part 2 and altered by Part 3,

and does not end in a whole dollar, the result is to be rounded to the nearest whole dollar.

Schedule 2 – Fees for other chargeable matters

Proposed fees for inspection of credit registers, particulars in credit registers, document registers and documents are listed in Schedule 2. If an extract includes particulars in relation to more than one licensee, credit representative, or registered person, a separate fee is applicable for each licensee, credit representative or registered person.

Persons exempt from fees in Schedule 2 are listed in Regulation 5.

Table 1.4 – Alteration of fees in Part 1 and 2

Matter	Fee
1 The making available under subsection 214(1) of the Credit Act of an extract of particulars in relation to a licensee, a credit representative, or a registered person	\$10
2 Inspection of a document register under section 219 of the Credit Act	\$25
3 Inspection of a document which will be included in a document register under section 219 of the Credit Act	\$25