

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 58**

Issued by the authority of the Minister for Financial Services, Superannuation and Corporate Law

Subject - *Corporations (Review Fees) Act 2003*  
*Corporations (Review Fees) Amendment Regulations 2010 (No. 1)*

The *Corporations (Review Fees) Regulations 2003* (Principal Regulations) prescribe amounts to be payable in respect of review dates for public companies, proprietary companies, special purpose companies and registered schemes, natural persons registered as auditors or liquidators, or natural persons holding an Australian financial services licence.

The Regulations amend the Principal Regulations to maintain the current rate of all fees and charges under the Act at the 2009 level in real terms from 1 July 2010.

The Regulations address the diminishing effect that inflation has in real terms on the value of fees and charges imposed under the Act.

The Regulations would:

- index fees and charges under the Act through specifying that in each new financial year, the amount of a fee set out in the Principal Regulations will be determined using a formula that will index the fee amount in line with the annual increase in the consumer price index; and
- ensure that the amount of the fee or charge remains constant where there is an annual decrease in the consumer price index.

Details of the Regulations are set out in the Attachment.

Under the *Corporations Agreement 2002* (the Agreement), the state and territory governments referred their constitutional powers with respect to corporations regulation to the Commonwealth. The Agreement requires the Commonwealth to consult with the Ministerial Council for Corporations before making amendments to certain provisions of the Principal Regulations. The responsible ministers of the states and the territories were consulted about the Regulations.

As the amendments to the Principal Regulations maintain the current level of fees imposed on individuals and corporations under the Principal Act, the amendments are considered to be machinery in nature and therefore no consultation on the amendments was undertaken. Furthermore, as the amendments give effect to a decision to adjust a tax, fee or charge that was announced in the 2009-10 Budget, consultation was considered unnecessary. Finally, under subclause 511(3) of the Agreement, the Commonwealth was not required to consult the Ministerial Council of Corporations as to whether a regulation should be exposed for public comment where the regulation relates exclusively to the alteration of fees or taxes.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**ATTACHMENT**

**Details of the Corporations (Review Fees) Amendment Regulations 2010 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations would be the *Corporations (Review Fees) Amendment Regulations 2010 (No. 1)*.

**Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

**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 the Schedule.

**Schedule 1 – Amendments**

**Item [1] – Regulation 4**

This item substitutes the current regulation 4 with a new provision which provides for the indexation of the amount of a fee for a review date prescribed under the Principal Regulations.

This item continues to prescribe annual review fees under Part 1 of Schedule 1 to the Principal Regulations, prescribe review fees to be paid upfront under Part 1A of Schedule 1, provides that a company or registered scheme that pays the fee mentioned in Part 1A of Schedule 1 is not required to pay another review fee for a period of ten years, and prescribe fees to be paid where the review fees are paid after those fees have become due and payable.

The amount of a review fee is the amount specified under the new provision.

In the financial year starting on 1 July 2009, the amount of the fee for a review date is the exact amount mentioned under Schedule 1 to the Principal Regulations.

From the financial year starting on 1 July 2010 onwards, the amount of a fee for a review date will be the lesser of \$10,000 or an amount determined by the formula provided under the new provision. The formula is the amount of the fee for the review date applicable immediately before 1 July of the relevant year, multiplied by the latest All Groups Consumer Price Index number (CPI number) published by the Australian Statistician, divided by the CPI number for the March quarter immediately preceding the latest CPI number.

Where the CPI number is less than the preceding CPI number, the amount of a fee for a review date remains unchanged.

The fee amount determined using the formula is rounded up or down to the nearest whole dollar.

Where the Australian Statistician publishes a CPI number in substitution of a CPI number previously published, the publication of the later CPI number is disregarded for the purposes of the determination of a fee amount under the new provision.

Where the Australian Statistician amends the reference base for the determination of the CPI number, the CPI numbers determined using the new reference base is used in the determination of a fee amount under the new provision.