

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 106**

Subject - *National Consumer Credit Protection (Fees) Act 2009*  
*National Consumer Credit Protection (Fees) Amendment*  
*Regulations 2010 (No. 1)*

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

Section 10 of the Fees Act provides that the Governor-General may make regulations for the purposes of sections 5, 6, 7 and 8 of the Fees Act, which set out certain details about the fees imposed.

The purpose of the Regulations is to amend the *National Consumer Credit Protection (Fees) Regulations 2010* (the Principal Regulations) to apply a date of commencement to certain provisions and clarify the operation of certain regulations.

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* (the LIA).

The Regulations have two different commencement dates. Items 1 to 3 of Schedule 1 are taken to have commenced on 1 April 2010. This retrospective commencement is needed to ensure fees for chargeable matters will not apply until 1 July 2010. The retrospective commencement date is consistent with subsection 12(2) of the LIA because, the rights of persons affected by the revised commencement are not affected so as to disadvantage those persons and no liabilities will be imposed. Items 1 to 5 of Schedule 2 commence on 1 July 2010.

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

## ATTACHMENT

**DETAILS OF THE NATIONAL CONSUMER CREDIT PROTECTION (FEES) AMENDMENT REGULATIONS 2010 (No. 1)**Regulation 1 – Name of Regulations

Regulation 1 provides that the name of the Regulations is the *National Consumer Credit Protection (Fees) Amendment Regulations 2010 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence, or are taken to have commenced on:

- (a) 1 April 2010 – in relation to regulations 1 to 3 and Schedule 1; and
- (b) 1 July 2010 – in relation to regulation 4 and Schedule 2.

Regulation 3 – Amendment of *National Consumer Credit Protection (Fees) Regulations 2010* – Schedule 1

Regulation 3 provides that Schedule 1 amends the *National Consumer Credit Protection (Fees) Regulations 2010* (the Principal Regulations).

Regulation 4 – Amendment of *National Consumer Credit Protection (Fees) Regulations 2010* – Schedule 2

Regulation 4 provides that Schedule 2 amends the Principal Regulations.

Schedule 1 – Amendments taken to have commenced on 1 April 2010.

Item 1 of Schedule 1 inserts a definition of the term ‘sole trader’ to mean a natural person, or a person (other than a natural person) who has only 1 representative that engages in credit activities on the person’s behalf. This definition extends the discounted licensing and annual compliance fee for sole traders with a turnover of less than \$100 million, to include incorporated entities. This better reflects standard industry practice and maintains parity with comparable fees in state and territory jurisdictions, which have a licensing scheme in relation to their current application of the Uniform Consumer Credit Code.

Item 2 of Schedule 1 makes the application date for subregulations 4(1) to (3) of the Principal Regulations to be on and after 1 July 2010. These subregulations relate to fees for chargeable matters which are listed under Schedule 1 of the Principal Regulations. This ensures that no fees are payable for chargeable matters before 1 July 2010.

Item 3 of Schedule 1 makes the application date for subregulations 5(1) and (2) of the Principal Regulations to be on and after 1 July 2010. These subregulations relate to fees for other chargeable matters such as inspections of extracts and documents. This ensures that no fees are payable for chargeable matters before 1 July 2010.

## Schedule 2 – Amendments commencing on 1 July 2010

Items 1 and 2 of Schedule 2 adds the total amount of rent payable by consumers under consumer leases made by the applicant in the preceding year, to the calculation of the applicant's turnover for the purposes of calculating the licensing and annual compliance fee that applies to the applicant. This amendment captures consumer lessors in the method for calculating licensing and annual compliance fees.

Item 3 of Schedule 2 clarifies that the fee for sole traders with a turnover of \$200 million or more, as calculated by the method specified in Schedule 1 of the Principal Regulations, is the same as the fee applying to entities that are not sole traders.

Item 4 of Schedule 2 changes the wording of item 2.5 in Part 2 of Schedule 1 to the Principal Regulations to clarify that no fees apply to the lodgment of a person's credit books, or giving ASIC other information, under subsection 51(4) of the Credit Act.

Item 5 of Schedule 2 specifies that no fees are chargeable for lodgment of particulars of a change or notifications of particulars under:

- subregulation 9A(2) of the *National Consumer Credit Protection Regulations 2010* (Credit Regulations), relating to changes to particulars which are entered in the credit register for unlicensed carried over instrument lenders;
- paragraphs 29(6)(a), 29(6)(b), 30A(3)(a) and 30A(3)(b) of the Credit Regulations, relating to notifications of a person's residential address or change in a person's residential address for licensees and unlicensed carried over instrument lenders;
- sections 75 and 76 of the Credit Act as modified in accordance with Schedule 2 to the Credit Regulations, relating to notification of prescribed unlicensed carried over instrument lenders and persons acting on behalf of a prescribed unlicensed carried over instrument lender; and
- subregulations 10(2), 10(3) and 10(10) of the Transitional Regulations, relating to notifications of a change regarding matter particulars in relation to registered persons, credit representatives, and any change in control of the registered person.

While these items carry no fees, the changes impose fees if information required to be provided under those items is provided outside of the time specified by those sections or regulations.