

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 138**

Subject - *National Consumer Credit Protection (Fees) Act 2009*  
*National Consumer Credit Protection (Fees) Amendment*  
*Regulations 2010 (No. 2)*

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 introduce indexation for fees under the Principal Regulations.

The Regulations also specify no fees for the lodgment or provision of information as required by the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010* that relates to carried over instruments.

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 Regulations commence on 1 July 2010.

These regulations deliver on a measure previously announced by the Government in the 2009-10 Budget in relation to ASIC fees, therefore it was not necessary to consult publicly on these regulations.

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. 2)**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. 2)*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence on 1 July 2010.

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), as amended by the *National Consumer Credit Protection (Fees) Amendment Regulations 2010 (No. 1)*.

## Schedule 1 – Amendments

Items 1, 2, 3, 5 and 6 makes consequential amendments to regulations 4 and 5 of the Principal Regulations to facilitate the introduction of indexation of the fees under those regulations by item 8.

Item 4 and 7, for the financial year starting on 1 July 2011, or a subsequent 1 July, applies indexation to a fee for a chargeable matter under regulations 4 and 5 in accordance with regulation 6.

Item 8 inserts new regulations 6 and 7 to describe the method by which fees under the Principal Regulations are to be indexed and rounded.

Subregulation 6(1) applies indexation for fees if the CPI number is greater than the earlier CPI number in the financial year starting on 1 July 2011 or a subsequent 1 July.

The indexed amount is the amount worked out using the formula:

$$\frac{\text{previous indexable amount} \times \text{latest CPI number}}{\text{earlier CPI number}}$$

Subregulation 6(2) applies no indexation for fees if the latest CPI number is not greater than the earlier CPI number.

Subregulation 6(3) prescribes that, for the purposes of the Principal Regulations, if the Australian Statistician publishes a CPI number for a March quarter in substitution for a CPI number previously published by the Australian Statistician for that quarter, the later CPI number must be disregarded. If the Australian Statistician changes the reference base for the Consumer Price Index, then, after the change is made, regard must be had only to the CPI numbers published using the new reference base.

Subregulation 6(4) would define, for the purposes of the Principal Regulations, the **CPI number**, the **earlier CPI number**, the **latest CPI number**, and the **previous indexable amount**.

Regulation 7 rounds to the nearest whole dollar (rounding up an amount of 50 cents) amounts worked out using Part 1 of Schedule 1, Part 2 of Schedule 1, or Schedule 2, including any alteration or indexation.

Item 9 specifies no fee for the lodgment or provision of information under a provision of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010* that relates to carried over instruments to encourage compliance with the National Credit Legislation. Late fees still apply where applicable.

Item 10 revises the alteration fee for lodgment of a document within 1 calendar month after a specified period to be \$67. This maintains consistency with similar fees under the *Corporations Act 2001*.

Item 11 revises the alteration fee for lodgment of a document more than 1 calendar month after a specified period to be \$278. This maintains consistency with similar fees under the *Corporations Act 2001*.

Item 12 removes Schedule 1, Part 4 of the Principal Regulations (Rounding) which is be obsolete due to the addition of regulation 7 by item 8.