

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 213

Issued by the authority of the Minister for Small Business

Business Names Registration (Fees) Act 2011

Business Names Registration (Fees) Regulations 2011

Section 7 of the *Business Names Registration (Fees) Act 2011* (Fees Act) provides that the Governor-General may make regulations setting out details in relation to matters under sections 4, 5 and 6 of the Fees Act.

The Fees Act forms part of the National Business Names Registration legislative package (legislative package) which also includes the *Business Names Registration Act 2011* (Registration Act) and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Transitional Act). A number of legislative instruments also form part of the legislative package.

The Fees Act allows for the imposition of fees for things done under the Registration Act.

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

Section 70 of the Registration Act provides that the fees imposed under the Fees Act are payable to the Commonwealth. These fees will be collected by the Australian Securities and Investments Commission (ASIC), on behalf of the Commonwealth. Section 72 of the Registration Act provides ASIC with a discretion, on behalf of the Commonwealth, to reduce, waive or refund fees that would otherwise be payable under the Registration Act, Transitional Act or Fees Act in a particular case, or class of case.

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*.

Prior to the introduction of the legislation into Parliament, the draft Registration Bill and the related Fees Bill were exposed for public consultation on two occasions, and all parts of the draft legislative package were exposed on one occasion. The text of all elements of the legislative package was negotiated with State and Territory officials over a period of more than one year.

The Office of Best Practice Regulation advised that the National Business Names Registration Project did not require a regulatory impact statement to be prepared.

The Regulations commence on commencement of sections 3 to 7 of the Fees Act, which is a day to be fixed by Proclamation.

The Regulations do not operate retrospectively.

Authority: Section 7 of the *Business Names Registration (Fees) Act 2011*

ATTACHMENT

Regulation 1 – Name of Regulations

This regulation provides that the name of the Regulations is the *Business Names Registration (Fees) Regulations 2011*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence at the same time as the commencement of sections 3 to 7 of the Fees Act.

Regulation 3 – Definitions

This regulation provides definitions for the terms used within the Regulations.

The ‘Act’ means the *Business Names Registration (Fees) Act 2011* (Fees Act).

‘Evidence of registration’ means the written notice that ASIC provides to an entity under subsection 33(8) of the Registration Act when their business name is registered.

‘Register’ means the Business Names Register that ASIC is required to establish under Section 22 of the Registration Act.

Other terms such as ‘business name’, ‘entity’ and ‘government body’ that are defined in the *Business Names Registration Act 2011* have the same meaning in the Regulations.

Regulation 4 – Prescribed Fees

Chargeable matters are listed in Schedule 1 to the Fees Regulations.

Subregulation 4(2) provides that the fees are set out in Schedule 1.

Subregulation 4(3) applies indexation for fees if the latest Consumer Price Index (CPI) number is greater than the earlier CPI number in the financial year starting on 1 July 2013 or on a subsequent 1 July.

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

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

The previous indexable amount is the amount of the fee for the chargeable matter, as before the relevant 1 July.

Subregulation 4(4) applies no indexation for fees if the latest CPI number is not greater than the earlier CPI number.

Subregulation 4(5) rounds to the nearest whole dollar amounts worked out under the Regulations; where the amount to be rounded is 50 cents, that amount is rounded down.

Subregulation 4(6) prescribes that, for the purposes of the 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 4(7) defines, for the purposes of the Regulations, the CPI number, the earlier CPI number and the latest CPI number.

Schedule 1 Fees

Item 1 provides that the fee for a new application for registration of a business name to an entity for 1 year is \$30.

Item 2 provides that for other applications for registration of a business name to an entity for 1 year not covered by Item 1 the fee is \$30. Renewal applications are covered by Item 2. As part of these applications, entities would need to provide evidence of registration which could include the written notice received under subsection 33(8) of the Registration Act.

Item 3 provides that the fee for a new application for registration of a business name to an entity for 3 years is \$70.

Item 4 provides that for other applications for registration of a business name to an entity for 3 years not covered by Item 3 the fee is \$70. Renewal applications are covered by Item 4. As part of these applications, entities would need to provide evidence of registration which could include the written notice received under subsection 33(8) of the Registration Act.

Item 5 provides that the fee for a copy of an extract of the Register containing only current information relating to only one business name is \$9.

Item 6 provides that the fee for a copy of the extract of the Register containing current information relating to more than one business name is \$18.

Item 7 provides that the fee for an application by an entity for an extract of the Register relating to only one business name containing both current and non-current information is \$17.

Item 8 provides that the fee for an application by an entity for an extract of the Register relating to more than one business name containing both current and non-current information is \$34.

Item 9 provides that there is no fee for an application by a government body for a copy of an extract of the Register.

Item 10 provides that if the Register is inspected, or a document is issued or displayed at an ASIC Business Centre, there is a fee of \$3 that is additional to any fee under Items 5, 6, 7 or 8.