

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 125

Issued by authority of the Assistant Treasurer

Corporations Act 2001

Corporations (Review Fees) Act 2003

Corporations Legislation Amendment (Membership Designations and Other Measures) Regulation 2013

As part of its 2011-12 Budget announcements on not-for-profit (NFP) sector reform, the Government announced the establishment of an independent statutory office, the Australian Charities and Not-for-profits Commission (ACNC). In 2012, the *Australian Charities and Not-for-profits Commission Act 2012* (the ACNC Act) established the ACNC as the Commonwealth level regulator for the NFP sector and also established a new regulatory framework for the NFP sector.

Many of the NFP entities that become registered by the ACNC will be companies that are also required to be registered with the Australian Securities and Investments Commission (ASIC) and are regulated under the *Corporations Act 2001* (the Corporations Act). For this reason, there are interactions between the two pieces of legislation and associated subordinate legislation that require minor and technical amendments to ensure that the ACNC is able to operate effectively as the Commonwealth level regulator for the NFP sector.

Schedule 1, item 1 of the Regulation

Subsection 1364(1) of the Corporations Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Corporations Act to be prescribed by regulations or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Corporations Act.

Schedule 1, item 1 of the Regulation specifies the membership designations of a professional accounting body that individuals reviewing the financial report of a medium-sized company limited by guarantee must hold under paragraph 324BE(1)(b) of the Corporations Act.

Most entities registered with the ACNC with annual revenue between \$250,000 and \$1 million (defined under the ACNC Act as medium-sized entities) must prepare an annual financial report under section 60-10 of the ACNC Act. Medium-sized entities can choose to have their financial reports audited or reviewed by a person taken to be a registered company auditor under subsection 324BE(1) of the Corporations Act.

Schedule 1, item 1 of the Regulation is a consequential amendment following the amendment to paragraph 324BE(1)(b) of the Corporations Act by the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* to remove the requirement for registered company auditors to hold a practising certificate prescribed by the regulations. Practising certificates are qualifications issued by professional accounting bodies to certain members certifying that they have particular training and experience.

Instead of a practising certificate, registered company auditors will be required to hold one of the membership designations of a professional accounting body prescribed by the regulations. This expands the category of individuals permitted to undertake a review, while still ensuring that individuals undertaking these reviews are qualified to do so.

Membership designations are used to differentiate between types of members of a professional accounting body. The differences between designations generally relate to qualifications, training and experience.

This amendment to the Corporations Act commences on 1 July 2013, and affects medium-sized entities registered with the ACNC through the reference to subsection 324BE(1) of the Corporations Act in the ACNC Act.

Reflecting the amendment to the Corporations Act, the Regulation removes the list of practising certificates currently specified by regulation 2M.4.01A, and replaces it with a table prescribing designations for membership of professional accounting bodies.

In December 2012, the Government released for public consultation a draft of Schedule 1, item 1 of the Regulation, together with separate draft regulations setting out content requirements for reports lodged under the Act.

Consultation closed on 15 February 2013. The Government received around 50 submissions on the combined set of draft regulations from key representatives of the sector, and accounting and auditing experts. Stakeholders generally did not oppose the proposal to expand the range of individuals able to conduct a review of a medium entity.

Schedule 1, item 2 of the Regulation

Section 8 of the *Corporations (Review Fees) Act 2003* (Review Fees Act) provides that the Governor-General may make regulations for the purposes of the Review Fees Act.

The purpose of Schedule 1, item 2 of the Regulation is to reduce the annual review fee to zero for entities registered with the ACNC.

ASIC conducts annual reviews of companies under Chapter 2N of the Corporations Act. Annual review fees are imposed on certain companies under the Review Fees Act, as specified in the *Corporations (Review Fees) Regulations 2003*. The amount of the fee differs according to the type of company.

The *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* inserted Part 1.6 into the Corporations Act, which provides that Chapter 2N does not apply to entities registered under the ACNC Act. This means that ASIC will no longer be conducting annual reviews of these entities. The Regulation amends the *Corporations (Review Fees) Regulations 2003* to specify that no fee is payable by an entity registered under the ACNC Act.

On 24 October 2012, the Government announced that charities registered with the ACNC, that are also corporations registered under the Corporations Act, would no longer be required to pay annual review fees to ASIC. The removal of this fee reduces compliance costs for charities that are corporations, and generally has not been opposed by the sector.

The drafting of this amendment is a technical change to the *Corporations (Review Fees) Regulations 2003*, and due to its technical nature, was not required to be subject to public consultation.

Details of the Regulation are set out at Attachment A.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the measures in the Regulation are compatible with human rights. A copy of the Statement is at Attachment B.

The Corporations Act and the Review Fees Act specify no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on 1 July 2013.

ATTACHMENT A**Details of the Corporations Legislation Amendment (Membership Designations and Other Measures) Regulation 2013****Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Corporations Legislation Amendment (Membership Designations and Other Measures) Regulation 2013*

Section 2 – Commencement

This section provides that the Regulation commences on 1 July 2013.

Section 3 – Authority

This section provides that the Regulation is made under the *Corporations Act 2001* and the *Corporations (Review Fees) Act 2003*.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments***Corporations Regulations 2001***

Under subsection 324BE(1) of the Corporations Act, an individual is qualified to review a financial report of a company limited by guarantee if the individual:

- a) is a member of a professional accounting body; and
- b) has a designation, in respect of that membership, prescribed by the regulations for the purposes of this paragraph.

Regulation 2M.4.01A currently specifies that an individual must hold a Certificate of Public Practice issued by the Institute of Chartered Accountants in Australia; or a Public Practice Certificate issued by CPA Australia Ltd or the National Institute of Accountants. The requirement for a practising certificate under subsection 324BE(1) of the Corporations Act will be removed from 1 July 2013.

Item 1 repeals and substitutes regulation 2M.4.01A of the *Corporations Regulations 2001* so that a designation mentioned in an item of the table below is prescribed for membership of the corresponding professional accounting body.

Item	Professional accounting body	Designation
1	Institute of Chartered Accountants in Australia	CA; or FCA
2	CPA Australia	CPA; or FCPA
3	Institute of Public Accountants	FIPA; or MIPA

Corporations (Review Fees) Regulations 2003

Item 2 amends Part 1 of Schedule 1 of the *Corporations (Review Fees) Regulations 2003*, which consists of a table prescribing the annual review fees payable under the *Corporations (Review Fees) Act 2003* and the *Corporations (Review Fees) Regulations 2003*:

Item	Company, registered scheme or person	Fee (\$)
101	A public company, except a special purpose company or small transferring financial institution	1 069.00
102	A proprietary company, except a special purpose company	226.50
103	A special purpose company	40.00
104	A registered scheme	1 069.00
105	A registered scheme that is being wound up	no fee
106	A small transferring financial institution, except a special purpose company	214.00
107	A company in liquidation	no fee

This regulation inserts item 108 in the table:

108	A registered entity under the <i>Australian Charities and Not-for-profits Commission Act 2012</i>	no fee
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The effect would be that entities that are registered under the *Australian Charities and Not-for-profits Commission Act 2012* are not required to pay an annual review fee under the *Corporations (Review Fees) Act 2003*.

ATTACHMENT B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations Legislation Amendment (Membership Designations and Other Measures) Regulation 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulation amends the *Corporations Regulations 2001* to expand the category of individuals able to review the financial report of a company limited by guarantee by removing the requirement to hold the specified practising certificate and permitting individuals with prescribed designations of membership of professional accounting bodies to review a financial report of a company limited by guarantee. It also amends the *Corporations (Review Fees) Regulations 2003* to reduce the annual review fee to zero for entities registered with the Australian Charities and Not-for-profits Commission.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.