

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Corporations Act 2001
ASIC Supervisory Cost Recovery Levy Act 2017
Australian Securities and Investments Commission Act 2001
Corporations (Fees) Act 2001
Corporations (Review Fees) Act 2003
National Consumer Credit Protection Act 2009
Tax Agent Services Act 2009

Corporations Amendment (Asia Region Funds Passport) Regulations 2018

Section 1364 of the *Corporations Act 2001* (the Corporations Act), section 8 of the *Corporations (Fees) Act 2001* (the Fees Act), section 8 of the *Corporations (Review Fees) Act 2003* (the Review Fees Act), section 251 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), section 13 of the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Levy Act), section 70-55 of the *Tax Agent Services Act 2009* (the TAS Act) and section 329 of the *National Consumer Credit Protection Act 2009* (the Credit Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the relevant Act. New section 1216L of the Corporations Act allows regulations to be made to continue the application of the Corporations Act in respect of a passport fund that has been deregistered or removed.¹

The purpose of the *Corporations Amendment (Asia Region Funds Passport) Regulations 2018* (the ARFP Regulations) is to make the amendments to the *Corporations Regulations 2001* (the Corporations Regulations) and other miscellaneous regulations which are necessary to implement the Asia Region Funds Passport (the Passport) in Australia. The Passport provides a multilateral framework that allows eligible funds to be marketed across participating economies with limited additional regulatory requirements.

The arrangements for the Passport agreed by the participating economies are set out in the *Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport* (the MOC).² Annex 1 of the MOC outlines the areas in which a participating country may impose obligations on foreign passport funds. Annex 2 sets out the common regulatory arrangements, while Annex 3 prescribes the obligations that apply to all operators of passport funds (the Passport Rules).

To give effect to the MOC, the *Corporations Amendment (Asia Region Funds Passport) Act 2018* (the ARFP Act) inserts a new Chapter 8A into the Corporations Act. This Chapter mainly implements the common regulatory arrangements in Annex 2 of the MOC. It sets out the process for Australian funds to

¹ This new regulation-making power is contained in the *Corporations Amendment (Asia Region Funds Passport) Act 2018*. Subsection 4(2) of the *Acts Interpretation Act 1901* allows powers to be exercised after the enactment of an Act but before its commencement.

² The MOC is available at: <<http://fundspassport.apec.org>>.

register as passport funds and the process for foreign funds to notify the Australian Securities and Investments Commission (ASIC) of their intention to offer interests to Australian investors. The ARFP Act also amends other parts of the Corporations Act to clarify how various obligations apply to notified foreign passport funds, as allowed under Annex 1 of the MOC. Key areas in which obligations apply to notified foreign passport funds include financial reporting, licensing and disclosure.

The ARFP Regulations make amendments to the Corporations Regulations and other miscellaneous regulations which are consequential to the ARFP Act. The benefits of the ARFP Regulations and the ARFP Act are that:

- Australian passport funds can market their interests to investors in participating economies more easily and access economies of scale;
- Australian investors can purchase interests in notified foreign passport funds and have greater choice;
- there are potential cost savings for funds and investors through enhanced competition; and
- the Australian economy is expected to benefit from increased financial services exports.

Details of the ARFP Regulations are set out in the [Attachment](#).

The enabling Acts do not specify any conditions that need to be satisfied before the power to make the ARFP Regulations may be exercised.

The ARFP Regulations were released for public consultation from 2 to 15 July 2018. No submissions were received.

The ARFP Regulations commence on the later of the day after it is registered on the Federal Register of Legislation and the day when the ARFP Act commences.

Details of the Corporations Amendment (Asia Region Funds Passport) Regulations 2018

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Corporations Amendment (Asia Region Funds Passport) Regulations 2018*.

Section 2 – Commencement

The Regulations commence on the later of the day after it is registered and the day when Schedule 1 of the ARFP Act commences (which is the earlier of a date set by proclamation or six months after Royal Assent). This ensures that all the amendments needed to implement the Passport regime commence at the same time. It also guards against retrospective commencement.

Section 3 – Authority

The Regulations are made under the Corporations Act, the ASIC Act, the Fees Act, the Review Fees Act, the Levy Act, the TAS Act and the Credit Act.

Section 4 – Schedules

Schedule 1 – Amendments to the Corporations Regulations 2001

All references in the Attachment are to the Corporations Regulations if not otherwise stated.

Items 1 to 7 - Definitions

Items 1 to 7 update the definitions in the Corporations Regulations.

Item 1 includes the terms ‘Australian Passport Fund Registration Number’ and ‘APFRN’ in the dictionary in existing regulation 1.0.02. These terms are defined in Chapter 8A of the Corporations Act and refer to the unique number assigned to an Australian passport fund by ASIC.

None of the other new terms inserted by the ARFP Act and used in the Regulation need to be defined in regulation 1.0.02. This is because the ARFP Act inserts the other new terms in section 9 of the Corporations Act and these automatically apply to the Corporations Regulations. On the other hand, ‘APFRN’ and ‘Australian Passport Fund Registration Number’ are only defined in the new Chapter 8A.

Amended definitions

Item 4 inserts the terms ‘Notified Foreign Passport Fund Registration Number’ and ‘NFPFRN’ in the dictionary. This number refers to the unique registration code allocated to the fund by its home regulator.

Item 2 amends the definition of ‘income stream financial product’ to exempt foreign passport fund products. This is consistent with the ARFP Act which excludes foreign passport fund products from the definition of security that applies to Part 7.11.

Item 3 amends the definition of ‘investment-based financial product’ to include foreign passport fund products. This recognises that interests in a notified foreign passport fund (and other related rights and options) are financial products for the purposes of Chapter 7.

Item 5 amends the definition of ‘simple managed investment scheme’ by changing references to ‘registered management investment scheme’ to ‘registered scheme (other than a passport fund)’. This ensures that the shorter Product Disclosure Statement (PDS) regime does not apply to notified foreign passport funds or Australian passport funds.

Items 6 and 7 amend the definition of ‘warrant’ to include certain legal or equitable rights in a notified foreign passport fund that would have been a derivative if legal or equitable rights were not expressly excluded from the definition of a derivative. This ensures that interests in notified foreign passport funds (and other similar financial products) are ‘warrants’ in the same situations that interests in registered schemes are ‘warrants’.

Items 8 to 11 and 13 to 16 - Requirements for lodging various documents

Items 8, 9 and 10 require the operator of a notified foreign passport fund to use the prescribed form to lodge a copy of the register of members under subsection 1213P(4) of the ARFP Act. This is consistent with the requirement in Chapter 8A for other documents lodged by an operator with ASIC to be in the prescribed form (see, for example, subsections 1212(2), 1213(2), 1216(2) and 1216E(2)).

Documents that must be provided to ASIC under the Passport Rules for this jurisdiction must also be in the prescribed form (item 11).

Item 13 requires the unique registration code allocated to a notified foreign passport fund by the home regulator (the notified foreign passport fund registration number or NFPFRN) to be included on all documents lodged with ASIC. Notified foreign passport funds are also required to include any other unique number allocated to the fund by ASIC on all documents lodged with ASIC.

The existing law already requires documents lodged with ASIC to include the name of the fund and, in the case of Australian passport funds, the Australian Passport Fund Registration Number (APFRN) (see section 1212B of the Corporations Act and subparagraph 1.0.07(f)(ii) of the Corporations Regulations). Item 14 also inserts a note under existing regulation 1.0.07 to direct readers to the provisions in the Corporations Act which deal with these matters for Australian passport funds.

Items 15 and 16 require the notified foreign passport fund to lodge the financial report and auditor’s report with ASIC in the approved form. Reports also need to state the fund’s name, NFPFRN and any other unique number allocated by ASIC, the operator’s name and Australian Registered Business Number (ARBN), the date on which the financial year for the fund begins and ends, and a statement verifying the documents. This mirrors the existing requirements for Australian passport funds (see existing paragraph 1.0.08(c) of the Corporations Regulations and section 1212B of the Corporations Act).

Items 17 to 19 - Certifying documents

Item 19 requires certified and verified documents relating to a notified foreign passport fund to be in the approved form and signed by a director or secretary of the operator, or the local agent or the local agent's director or secretary (if the local agent is a company). This is similar to the requirements for documents relating to registered schemes to be certified or verified by the director or secretary of the responsible entity or its agent.

A consequential amendment is also made to existing regulation 1.0.16 to disapply it to documents relating to notified foreign passport funds (items 17 and 18).

Items 20 and 21 - Particulars requested by ASIC

Items 20 and 21 remake the existing regulations relating to the particulars that ASIC may request so that the particulars for each type of entity are set out in a different subsection. This improves the readability of the regulation.

The items do not change the particulars that ASIC may request for companies. They expand ASIC's power to request particulars, in a return of particulars, from registered schemes (irrespective of whether they are Australian passport funds) by giving ASIC the power to request the name of the auditor of the scheme's financial report and the name of the auditor of the scheme's compliance plan.

Finally, items 20 and 21 allow ASIC to request additional particulars relating to Australian passport funds and notified foreign passport funds in an extract of particulars or a return of particulars. These additional particulars are shown in Table 1.1.

Table 1.1: Additional particulars that ASIC may request for passport funds

	<i>Particulars</i>	
	<i>Australian Passport Funds*</i>	<i>Notified Foreign Passport Funds</i>
<i>Extract of particulars</i>	<ul style="list-style-type: none"> • the fund's APFRN • any alternative name used by the fund, the name of the participating economy where the name is used and the date when the fund started and stopped using that name • the review date for the fund 	<ul style="list-style-type: none"> • the fund's NFPFRN • any additional identifier assigned by ASIC • the fund's name • the home country of the fund • the name and ARBN of the operator of the fund • any alternative name used by the fund, the name of the participating economy where the name is used and the date when the fund started and stopped using that name • the name and address of the local agent(s) of the operator • the operator's registered office or principle place of business in its place of origin

	<i>Particulars</i>	
	<i>Australian Passport Funds*</i>	<i>Notified Foreign Passport Funds</i>
<i>Return of particulars</i>	<ul style="list-style-type: none"> the name of the annual implementation reviewer 	<ul style="list-style-type: none"> the date on which a new member's name was entered in the register of members the new name of the operator certain financial information and information in the auditor's report the name of the auditor of the financial statements the name of the annual implementation reviewer

* ASIC may also request any particular that is prescribed for a registered scheme under the existing law.

Items 22 to 25 - Prohibited names for schemes

Items 22 to 25 amend the prohibitions on using a name for a registered scheme that is already in use.

Item 23 prohibits a person from applying to register a scheme with a proposed name that is the same as the name of a notified foreign passport fund or a foreign passport fund whose notice of intention to offer interests in Australia is still being considered by ASIC (a name in use by a fund). The responsible entity of a registered scheme is also prohibited from applying to change the name of a registered scheme to a name in use by a fund (item 24). Finally, item 25 prohibits ASIC from registering a managed investment scheme which uses a name in use by a foreign passport fund.

These items ensure that a registered scheme does not share the same name as another passport fund. They mirror the existing prohibition on a scheme using the same name as another registered scheme (or another scheme that has lodged an application for registration that is still under determination).

A consequential amendment is also made to the provision that prohibits ASIC from registering a scheme which uses the same name as another scheme, to clarify that this particular prohibition only applies to the registration of schemes (item 22). There are different rules for naming notified foreign passport funds (see the discussion of item 64, new regulation 8A.4.10 below).

Items 26 to 28 - Chapter 7 definitions

Items 26 and 27 ensure that a foreign passport fund product is captured by the definition of 'financial product'. Specifically, these items amend the definition of 'credit facility' so that it excludes interests in a notified foreign passport fund (and related rights and options). The definition of 'financial product' excludes products which are 'credit facilities' (see existing subparagraph 765A(1)(h)(i) of the Corporations Regulations).

Item 28 amends the definition of a 'clearing and settlement facility' so that it includes facilities that provide a regular mechanism for the parties to a transaction

relating to interests in a notified foreign passport fund (and related rights and options) to meet their obligations.

These amendments align the treatment of foreign passport fund products with the treatment of managed investment products.

Items 29 to 32 - Exemptions from the definition of providing a financial service

The Corporations Regulations carve out certain activities from the definition of providing a financial service.

Existing regulation 7.1.29 provides that a person is not taken to be providing a financial service if, in the course of providing an exempt service, the person provides a service which would ordinarily be a financial service. The regulation also sets out what are the exempt services. The exempt services include providing advice on:

- financial products that are interests in a trust (other than a registered scheme or a scheme that should have been registered) if the trust is not carrying on a business; or
- the acquisition or disposal, administration, due diligence, establishment, structuring or valuation of an entity in certain circumstances. This exemption is confined to financial product advice on a decision about securities of a body corporate that carries on the entity's business or certain interests in a trust (apart from a registered scheme or a scheme that should have been registered).

Item 29 amends the exempt services in regulation 7.1.29 to align the treatment of interests in a notified foreign passport fund with a managed investment product. This means that there is no exemption for providing advice on:

- financial products that are interests in a notified foreign passport fund; or
- the acquisition or disposal, administration, due diligence, establishment, structuring or valuation of an entity where the advice is financial product advice on a decision about interests in a notified foreign passport fund.

Existing regulation 7.1.33A provides that a person is not providing a financial service if the person only makes a recommendation or expresses an opinion about how another person should allocate their funds between certain types of investments.

Item 30 inserts foreign passport fund products as one of the types of investments.

Existing regulation 7.1.33E carves out from the definition of a financial service certain advice about a custodial or depositary service in certain circumstances. Advice about a custodial or depositary service which is intended to influence a decision about an equitable right or interest in an interest in a registered scheme is given special treatment so that it may still fall within the carve out.

Item 31 gives the same special treatment to interests in a notified foreign passport fund as interests in a registered scheme. In other words, advice still falls within the carve out in existing regulation 7.1.33E if it only influences a decision about an equitable right or interest in an interest in a notified foreign passport fund (provided the other requirements of that regulation are satisfied). Item 32 updates the note to the regulation so that it reflects this amendment.

Items 33 and 34 - Compensation arrangements

Items 33 and 34 apply the compensation arrangements under existing Part 7.5 of the Corporations Regulations and the arrangements for unauthorised transfers in Subdivision 4 of the Corporations Regulations to interests in notified foreign passport funds that are quoted on the Australian Stock Exchange and rights to acquire, by way of issue, such an interest. This ensures that the compensation arrangements for foreign passport fund products mirror those that apply to managed investment products.

Items 35 to 37 - Derivative transaction rules

Items 35 and 36 amend the definition of ‘representative capacity’ to include the responsible holding party or the operator of the notified foreign passport fund for the purposes of the derivative transaction rules in existing Subdivisions 2.1A and 2.1B of the Corporations Regulations. Item 37 allows the responsible holding party or operator of a notified foreign passport fund to access the existing exemptions from the derivative transaction rules.

Together, these items ensure that the responsible holding party for a notified foreign passport fund is treated the same as the responsible entity for a registered scheme.

Items 38 and 39 - Licensing exemption for certain providers outside of Australia

Existing subsection 911A(2D) (which is notionally inserted by the Corporations Regulations) provides a licensing exemption in certain situations where the provider of the service is outside of Australia and does not actively solicit persons in Australia.

Item 39 amends this exemption so that it does not apply to notified foreign passport funds or their operators. Instead, the principle circumstances where a notified foreign passport fund or its operator are exempt from holding a licence are set out in the ARFP Act (see paragraphs 911A(2)(eh), (ei) and (ej)).

Item 38 makes a technical amendment to replace the reference to ‘registered managed investment scheme’ with the words ‘registered scheme’ (see the discussion of the technical amendments on page 15 below).

Items 41 and 42 - Dealing with property

Existing regulation 7.8.07 ensures that financial services licensees deal appropriately with securities or managed investment products given to them; for example, by registering them in the client’s name. Items 41 and 42 extend these protections to foreign passport fund products.

Items 43 to 46 - Exemption from disclosure requirements for stockbrokers

Existing section 991E of the Corporations Act requires stockbrokers to disclose their own interest in transactions and recognises that stockbrokers and clients are in a fiduciary relationship. This section does not currently apply to managed investment products if they are made available in accordance with the safeguards in Chapters 5C and 7.

Item 46 states that the existing section 991E does not apply to interests in a notified foreign passport fund (and other similar products) where the products are made available in accordance with the requirements in Chapter 7 and Chapter 8A (the new chapter for passport funds).

Item 45 modifies the exemption for managed investment products in Australian passport funds so that it is only available where the products are made available in accordance with Chapters 5C, 7 and 8A.

Items 43 and 44 make technical amendments to clarify that section 991E is in the Corporations Act.

Item 48 - Exemption for small scale personal offers

This item clarifies that the PDS exemption for small scale personal offers of prescribed financial products does not apply to interests in notified foreign passport funds (and various rights, interests and options that relate to those interests). Notified foreign passport funds are required under the MOC and the ARFP Act to make a copy of their PDS available to ASIC at the time of lodging a notice of intention to offer interests in Australia. Accordingly, any additional work involved in providing a PDS for small scale personal offers is expected to be comparatively small.

Item 49 - Modifications to the PDS regime

Item 49 ensures that the modifications to the PDS regime in the Corporations Regulations apply to foreign passport fund products. These modifications apply to managed investment products and include requirements for fees and other costs to be disclosed in PDSs.

Items 50 to 54, 63 and 89 to 120 - Disclosure obligations

These items amend the disclosure obligations for issuers of foreign passport fund products to align them with the reporting obligations for issuers of managed investment products. In particular, four amendments are made.

First, the ARFP Act requires issuers of foreign passport fund products to issue periodic statements to retail clients. Items 50, 51 and 63 amend regulations 7.9.60B and 7.9.75 to require issuers to include in the periodic statements a brief description of each transaction during the reporting period, the amount of the transaction inclusive of taxes and an explanation of fees and costs (in accordance with Schedule 10³).

Second, items 89 to 119 apply Schedule 10 to foreign passport fund products. This is achieved by creating a new term, 'collective investment products' (which refers to both foreign passport fund products and managed investment products) and applying all of the requirements to 'collective investment products'. The tables which must be included in the PDS are also updated so that they refer to 'products', rather than 'managed investment products'. Finally, amendments are made to ensure that information about foreign taxes which are equivalent to GST and stamp duty are disclosed for both managed investment products and foreign passport fund products.

³ Schedule 10 sets out additional requirements for the disclosure of fees and costs for managed investment products in PDSs and periodic statements.

Third, item 54 amends subregulation 7.9.62(4) to exempt issuers from confirming certain transactions which consist solely of the acquisition of foreign passport fund products where the holder has agreed to the timing and amount of the acquisition and certain other conditions are satisfied. Item 52 amends the heading to the regulation so that it does not refer to particular types of products. Item 53 also amends the reference to ‘registered managed investment scheme’ in another exemption in subregulation 7.9.62(4) so that it instead uses the defined term ‘registered scheme’ (see the discussion of the technical amendments on page 15).

Finally, item 120 amends Part 3 of Schedule 10BA (Modifications of Part 7.9 of the Corporations Act) to make clear that the short-form PDS regime does not apply to Australian passport funds or notified foreign passport funds.

Items 55 to 62 - Cooling-off period

The ARFP Act requires issuers of foreign passport fund products to provide retail clients in this jurisdiction with a 14 day cooling-off period. This cooling-off period is designed to operate in the same way as for managed investment products.

Items 55 to 60 and 62 amend the Corporations Regulations to ensure that exemptions applying to managed investment products also apply to foreign passport fund products. In particular:

- Item 55 amends subregulation 7.9.64 to exempt certain foreign passport fund products which are to be tradeable on a financial market (as the return of a product would interfere with the normal operation of the financial market).
- Items 56 and 57 amend subregulation 7.9.65(1A) to prevent a person who acquired multiple foreign passport fund products in the same transaction from returning just one (and retaining the others).
- Items 58 to 60 amend regulation 7.9.67 to vary the amount that is to be repaid to prevent a person from using a right of return to avoid market losses.
- Item 62 amends subregulation 7.9.70 (which prohibits a person from returning a product if they have exercised a right or power relating to the product) so that it excludes rights relating to distributions.

Further, item 61 amends regulation 7.9.69 to imply certain terms relating to the return of products into a contract governing the issue and redemption of a foreign passport fund product. These terms are the same as those implied for managed investment products and include that:

- a product holder may have the right to return a financial product under the Corporations Act; and
- the product issuer does not contravene any terms of the contract or legal relationship by complying with a request to return a financial product made in accordance with the Corporations Act.

Item 64 - New Part 8A.7 relating to deregistration and denotification

New Part 8A.7 governs the conduct of Australian passport funds that have been deregistered and funds that have been removed as notified foreign passport funds (denotified funds).

New regulations 8A.7.10 to 8A.7.20 provide that certain parts of the Corporations legislation continue to apply to deregistered funds and denotified funds for a transition period. These new regulations give effect to subsection 54(1) of Annex 3 of the MOC and are made under section 1216L of the Corporations Act.

The ‘transition period’ begins on the day that the fund is deregistered or denotified and ends when the fund ceases to have any members who became members after the fund became, or on the expectation that it would become, a passport fund. These members are referred to as ‘protected members’. Protected members may be Australian members or members in another participating economy.

The definition of ‘protected member’ excludes persons who operated the fund and related parties of the current or former operator. This is because Part 8A.7 is primarily designed to protect the interests of members who do not control the fund’s operations.

The provisions of the Corporations legislation that continue to apply to deregistered funds and denotified funds are:

- Part 1.2A and any provisions dealing with disclosing entities;
- Chapters 2C, 2D, 2F, 2G, 2M, 2N and 2P which relate, inter alia, to the keeping of registers, disqualifications from managing corporations, members’ rights and remedies, financial reporting and providing information to ASIC;
- Chapters 6, 6A and 6B which cover takeovers, compulsory acquisitions and buy-outs;
- Chapters 6CA and 7 which govern continuous disclosure and the provision of financial services;
- Part 8A.1 (definitions and other preliminaries), Part 8A.2 (the Passport Rules), Part 8A.5 (the register of passport funds), Part 8A.6 (stop orders), Part 8A.7 (deregistration and denotification) and Part 8A.8 (exemption and modification powers);
- Chapter 9 which includes the civil consequences of contravening civil penalty provisions and ASIC’s power to accept enforceable undertakings;
- for Australian passport funds that have been deregistered, the requirement for all documents lodged with ASIC to bear the APFRN in section 1212B; and
- for funds that have been denotified, the provisions relating to their general treatment, the prohibition on issuing debentures and the provisions relating to providing key information in Divisions 2 to 4 of Part 8A.4.

The new regulations also continue the application of all machinery provisions, definitions and compliance and enforcement provisions in the Corporations Act and ASIC Act, regulations made under the Corporations Act and ASIC Act and rules of court which relate to the provisions listed above. This includes section 93B and subsection 127(3AA) of the ASIC Act.

Several of these provisions apply or relate to the ‘operator’ of a fund. The existing law defines the ‘operator’ of an Australian passport fund as the person licensed to operate the collective investment scheme (CIS) under the Corporations Act and there are corresponding definitions for funds from other participating economies (see sections 9 and 56 of the Passport Rules). Some funds that have been deregistered or denotified may not have a person who satisfies the definition of an ‘operator’ in the Passport Rules. Accordingly, new subregulations 8A.7.15(5) and 8A.7.20(5) modify the definition of ‘operator’ for deregistered and denotified funds so that it includes:

- for a deregistered Australian passport fund that continues as a registered scheme, the responsible entity of the scheme;
- for a fund that has been removed as a notified foreign passport fund but continues as a regulated collective investment scheme in its home economy, the operator of the scheme; or
- otherwise, the entity that controls the fund.

Items 64 and 80 to 82 - Miscellaneous new regulations for Chapter 8A

New regulation 8A.4.10 (item 64) and items 80 to 82 apply the same rules for ascertaining whether a name is unavailable for a foreign passport fund as the rules that currently apply to companies and certain other entities that register with ASIC. These rules are set out in Schedule 6 of the Corporations Regulations.

New regulation 8A.4.40 prohibits a person from using information on the register of members of a notified foreign passport fund to:

- solicit a donation from a member;
- if the person is a stockbroker, solicit a member;
- gather information about the member’s wealth; or
- make certain unsolicited invitations or off-market offers to purchase a financial product.

The operator of a notified foreign passport is also permitted to refuse to provide a copy of the register of members if the application states that the information is being sought for one of the above purposes.

These rules relating to prohibited uses of information on the register of members of a notified foreign passport fund mirror those that apply to the register of members of Australian passport funds and registered schemes (see existing section 173 and existing regulation 2C.1.03). They are designed to protect members’ privacy.

New regulation 8A.4.45 allows ASIC to destroy or otherwise dispose of certain documents after seven years. This period is the same as the period that ASIC must retain records lodged under Part 7.12 (see existing section 1101D and existing regulation 7.12.01).

New regulation 8A.5.10 provides that the details listed in Table 1.2 must be included on the Register of Passport Funds.

Table 1.2: Prescribed details for the register of passport funds

<i>Type of fund</i>	<i>Details</i>
Australian passport funds	<ul style="list-style-type: none"> • the fund’s APFRN • the fund’s name • the ARSN of the registered scheme to which the passport fund is linked • a statement that the fund is registered as an Australian passport fund • the date the fund was registered as an Australian passport fund • any alternative name that the fund used, including the participating economy where it was used and the date when it started and ceased to use that name • the operator’s name, Australian Company Number(ACN) and Australian Business Number (ABN) • any other name, ACN or ABN of an operator of that fund, including the date when it started and ceased to have that name or ACN • the fund’s review date • the name of the auditor of the fund for each financial year • the name of the implementation reviewer for the fund for each review period that an implementation review needs to be conducted
Deregistered Australian passport funds	<ul style="list-style-type: none"> • all the details prescribed for Australian passport funds apart from the statement that the fund is currently registered as a fund • a statement that the fund has been deregistered • the date on which the fund was deregistered • whether the deregistration was voluntary, initiated by ASIC or as a result of the fund being deregistered as a registered scheme

<p>Notified foreign passport funds</p>	<ul style="list-style-type: none"> • the fund’s NFPFRN • any other unique number allocated to the fund by ASIC • the fund’s name • any alternative name used by fund, including the participating economy where the name was used and the date it started and ceased using that name • that the fund is a notified foreign passport fund • the fund’s home economy • the date on which the fund became a notified foreign passport fund • the operator’s name and ARBN • any other name/ARBN of an operator of that fund, including the date when it started and ceased to have that name or ARBN • the fund’s review date • the name of the auditor of the fund’s financial reports for each financial year • the name of the implementation reviewer for the fund for each review period that an implementation review needs to be conducted
<p>Denotified foreign passport funds</p>	<p>In addition to the details for notified foreign passport funds:</p> <ul style="list-style-type: none"> • all the details prescribed for notified foreign passport funds apart from the statement that the fund is currently a notified foreign passport fund • a statement that the fund has been removed as a notified foreign passport fund • the date on which the fund was removed as a notified foreign passport fund • whether the denotification was voluntary or as a result of deregistration as a passport fund in the fund’s home economy

Items 65 to 68 - Searches of registers

Items 65 and 68 allow persons to inspect and search the Register of Passport Funds. ASIC also has the power to make legislative instruments to prevent certain information from being made publicly available and are intending to prevent all private information from being released (see subsections 1212(4) and 1213(4) of Chapter 8A).

Items 66 and 67 make technical amendments to the provisions that apply to registered schemes to clarify that they refer to registration, winding up and deregistration under Chapter 5C of the Corporations Act.

Items 69 to 71 - Penalty for new strict liability offences

Items 69 to 71 prescribe a penalty for the new offences in the ARFP Act that are subject to the penalty notice regime in section 1313 of the Corporations Act. The prescribed penalty is 12 penalty units for a natural person and 60 penalty units for a body corporate. These amounts are consistent with the Australian Government's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* which states that the amount payable for a penalty notice provision should not exceed one fifth of the maximum penalty that a court may impose (60 penalty units as per subsection 1313(8)) and in any event, the maximum penalty must be less than 50 penalty units for an individual.

Items 72 to 76 - Updating registers

The ARFP Act requires the operator of a listed notified foreign passport fund to keep a record of registered interests (see section 672DA). A register of members must also be retained for all notified foreign passport funds so that it can be made available to members or ASIC (see sections 1213K and 1213P). If these registers are stored by the operator or another corporation, items 72 to 76 require them to be maintained so that the registers are no more than 20 business days out of date.

Items 78 and 79 - Obtaining copies

The ARFP Act allows certain persons to request a copy of the constitution or the register of members of a notified foreign passport fund (see sections 1213J and 1213K).

Item 79 prescribes a maximum fee of \$10 for supplying a copy of the constitution. The prescribed fee for supplying a copy of a register of members of a notified foreign passport fund is \$250 plus 5 cents for each member in the range from 5,000 to 20,000 and 1 cent for the 20,000th member and each additional member. This is the same as the amount currently prescribed for obtaining a copy of the register of a registered scheme in existing item 1AA of the table in Schedule 4.

Existing item 1AA is also remade so that it is in the same form as the new item for registers of members of a notified foreign passport fund and accords with the current drafting practice (item 78).

Items 82 to 88 - Availability of names

Items 82 to 88 amend the rules for determining the availability of names in Schedule 6. In particular, they prevent an entity using a name containing the phrase 'passport fund' if the entity is not a foreign passport fund.

Items 12, 38, 40, 47, 77, 121 and 122 - Technical amendments

Item 12 removes a note to regulation 1.0.03A that relates to the state of affairs on 1 July 2007. This note contains information which is no longer current.

Items 38, 47, 77, 121 and 122 replace various references to 'registered managed investment scheme' with 'registered scheme' (see the discussion of item 38 above). This ensures that a defined term is used rather than a term with an uncertain meaning. It also clarifies that notified foreign passport funds (which are treated as managed investment schemes) are not captured, where the term is used.

Item 40 makes a technical correction to the terminology in the second example in paragraph 7.7A.10(3)(a) so that it refers to a ‘registered scheme’ rather than a ‘managed investment scheme’. The term is used in the context of a scheme with a responsible entity and is intended only to apply to registered schemes because only registered schemes have responsible entities.

Schedule 2 – Other Amendments

Items 1, 3, 4, 7, 8 and 12 - ASIC Supervisory Cost Recovery Levy for operators of notified foreign passport funds and regulated former notified funds

New leviable entities

Items 3 and 4 amend section 5C of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Levy Regulations) to prescribe the operator of a notified foreign passport fund as a leviable entity for the purposes of those Regulations.⁴

Operators of funds that have been removed as notified foreign passport funds but continue to have ‘protected members’ are also included as leviable entities (item 4). These funds are referred to as ‘regulated former notified funds’ (item 1). They remain subject to much of the Corporations legislation and, accordingly, ASIC continues to perform its supervisory functions with respect to these funds. For the meaning of ‘protected members’, refer to the explanation of Part 8A.7 above.

A regulated former notified fund may continue as a regulated CIS or it may cease to be a regulated CIS. If the fund continues as a regulated CIS, the ‘operator’ is the person that operates the regulated CIS as per the law of the relevant economy. If the denotified fund ceases to be a regulated CIS, the operator is the entity that controls the fund. This could include a liquidator (item 1).

Calculation of levy

Items 7 and 12 create a new sub-sector covering operators of notified foreign passport funds and operators of regulated former notified funds (the new sub-sector). The items also set out the methodology for calculating the levy.

The levy for operators of notified foreign passport funds is calculated in a similar way to the levy for the ‘wholesale trustees’ sub-sector and consists of a minimum levy component (\$1,000) and a graduated levy component. When calculating the graduated levy component, the entity metric⁵ is the total value of Australian assets in all notified foreign passport funds operated by the entity at the end of the financial year. If the entity also operates another notified foreign passport fund or a denotified fund that continues to have a ‘protected member’, any assets that are interests in that fund are excluded. There are also ‘no double counting’ rules to prevent overlap between the new sub-sector and the ‘wholesale trustees’ sub-sector. These rules are explained below.

⁴ Section 7 of the Levy Act defines a leviable entity to include a person regulated by ASIC who is in a class of persons prescribed by the regulations.

⁵ The entity metric is used to calculate each entity’s share of activity within the sub-sector.

The total value of Australian assets is determined by using the redemption price of all interests in the fund held by Australian members at the end of the financial year (as per subsection 50(1) of the Passport Rules). The calculation is made as if the interests were redeemed at the end of the year and it is irrelevant whether members have redeemed their interests or whether redemptions have been suspended. If the fund is only a notified foreign passport fund for part of the financial year, the entity metric is pro-rated to reflect the portion of the year that the fund was a notified foreign passport fund.

The levy for operators of regulated former notified funds is calculated in the same way as the levy for operators of notified foreign passport funds, apart from the pro-rating. The entity metric is pro-rated to reflect the portion of the year that the fund was either a regulated former notified fund or a notified foreign passport fund operated by the same entity (item 7).

Removing double counting between the ‘wholesale trustees’ and the new sub-sectors

There is a potential for overlap between the new sub-sector and the ‘wholesale trustees’ sub-sector because the operator of a notified foreign passport fund may also issue interests in unregistered managed investment schemes. This potential for double counting is removed with two new ‘no double-counting rules’ (see Table 2.1). The new rules mirror the ‘no double counting rules’ in the calculation of the entity metric for the ‘wholesale trustees’ and ‘responsible entities’ sub-sectors (see existing subsections 35(3) and 37(5)).

Table 2.1: Rules to prevent overlap between the ‘wholesale trustees’ sub-sector and the new sub-sector

<i>Sub-sector</i>	<i>Assets excluded from the entity metric</i>	<i>Reference in the Regulation</i>
Operators of notified foreign passport funds or regulated former notified funds	Assets that are interests in an unregistered managed investment scheme issued by the entity (if the entity is also part of the ‘wholesale trustees’ sub-sector)	Item 7, new paragraph 35A(4)(c)
Wholesale trustees	Assets that are interests in a notified foreign passport fund or a regulated former notified fund (if the entity is also part of the new sub-sector)	Item 8, new paragraph 37(5)(c)

Items 1, 2, 5, 6, 9 to 11 - Definitions in the Levy Regulations

The regulations also amend some of the definitions used in the Levy Regulations.

The term ‘quoted’ is used in section 15 but it was not previously defined. Item 5 inserts a definition for ‘quoted’, defining it as quoted on a prescribed financial market where ‘prescribed financial market’ has the same meaning as in the Corporations Act.

Amendments are also made to clarify the definition of ‘securities’. Previously, this term was defined to have the same meaning as in the Corporations Act. This definition was ambiguous as the term, ‘securities’, has a different meaning in different parts of the Corporations Act. Item 2 repeals the existing definition. Items 5, 6 and 9 to 11 insert new definitions as set out in Table 2.2.

Table 2.2: Definition of ‘securities’ in the Levy Regulations

<i>Sub-sector</i>	<i>Relevant definition of ‘securities’</i>
Auditors of disclosing entities (existing section 15)	Definition that applies for the purposes of Chapters 6C to 6CA, disregarding Chapter 6C (see subsection 92(3) of the Corporations Act)
Listed corporations (section 19)	Definition that applies for the purposes of Chapters 6C to 6CA, disregarding Chapter 6C (see subsection 92(3) of the Corporations Act)
Small securities exchange operators (section 48)	Definition that applies in Chapter 7, disregarding Part 7.11 (see section 761A of the Corporations Act)
Large securities exchange operators (section 51)	Definition that applies in Chapter 7, disregarding Part 7.11 (see section 761A of the Corporations Act)
Securities dealers (section 67)	Definition that applies in Chapter 7, disregarding Part 7.11 (see section 761A of the Corporations Act)

Finally, item 1 clarifies that references to an unregistered managed investment scheme do not include a registered scheme, a notified foreign passport fund or a fund that has been removed as a notified foreign passport fund but continues to have ‘protected members’ (see the explanation of Part 8A.7 for the definition of ‘protected members’).

Items 13 and 14 - Amendments to the *ASIC Regulations 2001*

ASIC, in its annual reports, is required to set out various details about its use of prescribed information gathering powers, including the number of times it used the powers in the last financial year (see existing section 136 of the ASIC Act). The ARFP Act grants ASIC a new power to require an operator of a notified foreign passport fund to lodge the register of members for the fund (see section 1213P). Item 13 prescribes this new power so that ASIC must also include details about its use in its annual report.

Item 14 amends the meaning of ‘clearing and settlement facility’ to include transferring an interest in a notified foreign passport fund (and other similar financial products). This ensures that the definition of providing a ‘financial service’ for the purposes of the ASIC Act also captures transferring an interest in a notified foreign passport fund (and other similar financial products).

Items 15 to 26 - Amendments to the *Corporations (Fees) Regulations 2001*

Items 15 to 17 impose the new regulatory fees on notified foreign passport funds and Australian passport funds set out in Table 2.3.

Table 2.3: New ASIC fees

Table item	Chargeable matter	Fee
<i>ASIC fees for only Australian passport funds</i>		
79A	Registering an Australian passport fund (including lodging the PDS) under section 1212	\$8,862.72
79B	Withdrawing an application to become an Australian passport fund under section 1212	no fee
79C	Lodging a notice that the name of the fund in another participating economy is not the same as the name of the fund in this jurisdiction under section 1212C	no fee
<i>ASIC fees for only notified foreign passport funds</i>		
79D	Notifying of the intention to offer interests in a foreign passport fund (including lodging the PDS) under section 1213	\$2,550
79E	Lodging a notice to withdraw a notice of intention to offer interests under section 1213	no fee
79G	Lodging a notice of a change of operator under the table in section 12 of the Passport Rules*	\$1,187
<i>ASIC fees for Australian passport funds and notified foreign passport funds</i>		
79F	Lodging a notice relating to the limits on portfolio allocation or exposure being exceeded or the Passport Rules being breached under subsections 12(1), (2) or (4) of the Passport Rules*	no fee
79H	Lodging a report of an annual implementation review under section 15 of the Passport Rules*	no fee
79J	Lodging a notice relating to exceptional market circumstances under subsection 33(3) of the Passport Rules*	\$1,540
80	Applying for exemptions, declarations etc under Chapter 8A	\$3,487

* The Passport Rules for this jurisdiction are the rules made by the Minister under section 1211 of the Corporations Act. They must be substantially the same as Annex 3 of the MOC.

The ARFP Act extends the requirement to lodge an annual financial report to notified foreign passport funds (see Schedule 2, item 97, subsection 319(1AA)). Item 18 amends table item 146 of Schedule 1 to extend the existing exemption from paying a fee of \$1,217 (which applies to registered schemes) to notified foreign passport funds. This means that no fee is payable.

Items 19, 21, 22 and 26 impose the new registry fees on notified foreign passport funds and Australian passport funds set out in Table 2.4.

Table 2.4: New registry fees

Table Item	Chargeable Matter	Fee
<i>Registry fees for only Australian passport funds</i>		
12A	Applying to deregister an Australian passport fund as a registered scheme (see also item 12B)	no fee
12B	Applying to deregister an Australian passport fund as an Australian passport fund (see also item 12A)	\$889
23A	Lodgement of a notice that an Australian passport fund is using another name in another economy under section 1212C	\$40
<i>Registry fees for only notified foreign passport funds</i>		
7A	Application for the Minister to consent to a name being made available for a foreign passport fund	\$1,217
12C	Applying to remove a notified foreign passport fund	no fee
<i>Registry fees for both notified foreign passport funds and Australian passport funds</i>		
3 and 4	Approving a choice of review date under subsections 345B(1), (2) or (2A)	\$397 (for an application relating to more than 10 entities with the same ultimate holding company) or \$40 for each entity
23A	Lodging any other notice under Chapter 8A or the Passport Rules, such as, a notice of: <ul style="list-style-type: none"> • an intention to wind up a fund, the commencement or wind-up or the completion of wind-up under the table in section 12 of the Passport Rules; or • a suspension of redemption of interests under section 12 of the Passport Rules. 	\$40

Item 20 also amends table item 5 to provide an exemption for annual reports lodged by notified foreign passport funds.

Item 24 imposes a fee for inspecting the Register of Passport Funds (new table item 19A). The fee is \$40 if the documents are reproduced on a computer system for 10 pages or more. In all other cases the fee is \$17. This aligns the fees for inspecting the Register of Passport Funds with the fee for inspecting documents that are lodged in relation to corporations or registered schemes in existing table item 16.

Items 23 and 25 ensure that the existing fees for retrieving information relating to a company or registered scheme from ASIC's registers also apply to information relating to a notified foreign passport fund (see the amendments to table items 15, 16 and 22).

Items 27 to 38 - Amendments to the *Corporations (Review Fees) Regulations 2003*

Items 27 to 38 impose the fees on notified foreign passport funds that are set out in Table 2.5.

Table 2.5: Review fees for notified foreign passport funds

<i>Table Item</i>	<i>Type of fee</i>	<i>Amount</i>
Part 1- Annual fees		
104	Notified foreign passport funds	\$1,069
105A	Notified foreign passport funds that are being removed	no fee
Part 1A - Upfront fees		
104	Notified foreign passport funds	\$7,700

These fees are the same as the fees currently imposed on registered schemes.

Item 39 - Amendments to the *National Consumer Credit Protection Regulations 2010*

The definition of ‘a securitisation product’ in the *National Consumer Credit Protection Regulations 2010* currently includes interests in a managed investment scheme ‘within the meaning of section 9 of the Corporations Act’.

Item 39 clarifies that the definition of ‘securitisation product’ includes interests in a notified foreign passport fund by removing the reference to section 9 of the Corporations Act. Interests in notified foreign passport funds are treated as managed investment schemes in the Corporations Act but this is achieved by inserting a new section, rather than by amending the definition in section 9.

The consequence of this amendment is that the operator of a notified foreign passport fund may be a securitisation entity and able to take advantage of the licensing exemption that applies to other securitisation entities.

Item 40 - Amendments to the *Tax Agent Services Regulations 2009*

Item 40 provides that ‘tax agent services’ do not include services provided by the operator of a notified foreign passport fund (or a related entity) to the fund or one of its members in relation to the fund. This ensures that providers of these services do not need to comply with the regulatory and educational requirements that apply to persons providing tax agent services in the *Tax Agents Services Regulation 2009*. It also aligns the treatment of these services with similar services provided by a responsible entity of a registered scheme.

Schedule 3 - Prescribed forms

Item 1 remakes the prescribed forms for the ‘notice of initial substantial holder’ (form 603), ‘notice of change of interests of substantial holder’ (form 604) and the ‘notice of ceasing to be a substantial holder’ (form 605). These forms are currently used for registered schemes and companies. The remade forms can also be used for notified foreign passport funds.

Statement of Compatibility with Human Rights

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

Corporations Amendment (Asia Region Funds Passport) Regulations 2018

The Corporations Amendment (Asia Region Funds Passport) Regulations 2018 (the Regulations) are 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 Regulations make the amendments to the *Corporations Regulations 2001* (the Corporations Regulations) and other miscellaneous regulations which are necessary to implement the Asia Region Funds Passport (the Passport) in Australia. The Passport provides a multilateral framework that allows eligible funds to be marketed across participating economies with limited additional regulatory requirements.

The arrangements for the Passport agreed by the participating economies are set out in the *Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport* (the MOC).⁶ Annex 1 of the MOC outlines the areas in which a participating country may impose obligations on foreign passport funds. Annex 2 sets out the common regulatory arrangements, while Annex 3 prescribes the obligations that apply to all operators of passport funds (the Passport Rules).

To give effect to the MOC, the *Corporations Amendment (Asia Region Funds Passport) Act 2018* (the ARFP Act) inserts a new Chapter 8A into the Corporations Act. This Chapter mainly implements the common regulatory arrangements in Annex 2 of the MOC. The ARFP Act also amends other parts of the Corporations Act to clarify how various obligations apply to notified foreign passport funds, as allowed under Annex 1 of the MOC. Key areas in which obligations apply to notified foreign passport funds include financial reporting, licensing and disclosure.

The Regulations amend the *Corporations Regulations 2001*, the *Australian Securities and Investments Commission Regulations 2001*, the *National Consumer Credit Protection Regulations 2010* and the *Tax Agent Services Regulation 2009* so that they are consistent with the changes made in the ARFP Act.

The Regulations also make consequential amendments to the *Corporations (Fees) Regulations 2001*, *Corporations (Review Fees) Regulations 2003* and the *ASIC Supervisory Cost Recovery Levy Regulations 2017* to prescribe new fees for certain matters relating to notified foreign passport funds.

Human rights implications

The Regulations may engage the following human rights:

- the right to privacy; and
- the right to a fair and public hearing.

⁶ The MOC is available at: <<http://fundspassport.apec.org>>.

Engagement of the right to privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) requires parties to the ICCPR to uphold individual rights not to have their private, family and home life or correspondence unlawfully or arbitrarily interfered with. It also includes the right to protection by law of one's reputation. According to the Parliamentary Joint Committee on Human Rights' *Guide to Human Rights*, the right to privacy includes:

- the right to respect for confidential and private information, particularly the storing, use and sharing of such information; and
- the right to control the dissemination of information about one's private life.

The Regulations engage the right to privacy because they:

- allow the public to search the new Register of Passport Funds (the Register) and prescribe the information on the Register that may be made available to the public; and
- regulate the purposes for which a copy of the register of members of a notified foreign passport fund may be made available.

Prescribed information on the Register of Passport Funds

Section 1214 of the ARFP Act obliges ASIC to establish a Register of Passport Funds (the Register) or ensure that a Register is established. Item 65 of the Regulations amends regulation 9.1.01 to prescribe the Register for the purposes of 1274A of the Corporations Act. This allows ASIC to permit a person to search and obtain information from the Register. Further, item 68 of the Regulations amends regulation 9.1.02 to prescribe the information that is to be made available in relation to passport funds. To the extent that the Register includes any personal information, the right to privacy may be engaged.

The right to privacy is not an absolute right and it is subject to permissible limits. In particular, limitations are permissible if they pursue a legitimate objective, there is a rational connection to the legitimate objective and the limitation is proportionate to that objective.

The legitimate objective being pursued is to give the public (including members and prospective members) access to information about the passport funds that are permitted to offer interests in Australia. The amendments to regulations 9.1.01 and 9.1.02 achieve this legitimate objective by enabling members of the public to search the Register and obtain the information prescribed by the regulations.

Most of the prescribed information relates to the fund and its operator, neither of which is a natural person. For example, the prescribed information includes the fund's unique identification number, the unique identification number of the operator, whether the fund is an Australian passport fund or a notified foreign passport fund and the fund's review date.

The only prescribed information which may relate to a natural person is the name of the auditor and the implementation reviewer. These persons' names may already be available to the public, for example, because existing section 1274A of the Corporations Act and existing regulation 9.1.02 of the Corporations Regulations

already allow persons to search ASIC's registers to obtain both the name and address of the auditor of a registered scheme.

The new right to search the Register is consistent with the public's power to search other registers maintained by ASIC. It would be inappropriate for members of the public to have less access to the Register than they have to other registers maintained by ASIC.

Further, there are safeguards to prevent abuse. In particular, ASIC has the power to prevent certain information from being made available to the public (see subsections 1212(4) and 1213(4) of the ARFP Act).

Right to obtain a copy of the register of members

Section 1213K of the ARFP Act allows certain persons to request a copy of a notified foreign passport fund's register of members. This register could include information such as members' names, postal addresses and shareholding details. Section 1213L of the ARFP Act prohibits the information on the register of members from being used for certain purposes, such as contacting or sending material to the member. It also allows the regulations to prescribe other prohibited uses.

In relation to the potential engagement of the right to privacy by sections 1213K and 1213L of the ARFP Act, refer to the Statement of Compatibility with Human Rights that accompanied the Act (see paragraphs 9.12 to 9.46 of the Explanatory Memorandum).

New regulation 8A.4.10 (item 64 of the Regulations) prohibits a person from using information on the register of members to solicit a donation from a member, gather information about the member's wealth or make certain unsolicited invitations or off-market offers to purchase a financial product. It also prohibits the information being used by stockbrokers to solicit a member. This regulation promotes the right to privacy by further constraining the purposes for which a copy of a register of members of a notified foreign passport fund can be obtained and used.

Right to a fair and public hearing

Article 14 of the ICCPR provides that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

To the extent of any impact on individuals, a number of strict liability offences contained in the ARFP Act might be considered to engage the right to a fair and public hearing because they are subject to the penalty notice regime in section 1313 of the Corporations Act. The Statement of Compatibility with Human Rights for the ARFP Act addresses the potential engagement of the right to a fair and public hearing resulting from the new strict liability offences (see paragraphs 9.65 to 9.67 of the Explanatory Memorandum). In particular, the Statement notes that the penalty notice framework is designed to provide an efficient way of dealing with minor breaches by avoiding significant delays and costs associated with court action. It also notes that the payment of an amount in relation to a penalty notice is not taken to be an admission of liability regarding a contravention of the prescribed offence.

Items 69 to 71 of the Regulations prescribe a penalty for the new strict liability offences pursuant to paragraph 1313(8)(aa) of the Corporations Act. The penalty is 12 penalty units for a natural person and 60 penalty units for a body corporate. The amount prescribed is consistent with the *Guide to Framing Commonwealth Offences*,

Infringement Notices and Enforcement Powers (see paragraphs 3.3 and 6.3). It does not involve imprisonment, is not more than one fifth of the maximum penalty prescribed for the offence in the Act and is capped at less than 50 penalty units for an individual (or 250 penalty units for a body corporate).

For this reason, items 69 to 71 of the Regulations are not considered to limit the right to a fair and public hearing.

Conclusion

The Regulations are compatible with human rights. They potentially engage the right to privacy and the right to a fair and public hearing. However, to the extent that the Regulations place limitations on these rights, these limitations can be considered legitimate, rational and necessary in light of the objectives they aim to achieve, and reasonable and proportionate in their extent.