

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

ASIC Supervisory Cost Recovery Levy Act 2017
Business Names Registration (Fees) Act 2011
Corporations (Fees) Act 2001
National Consumer Credit Protection (Fees) Act 2009
Superannuation Auditor Registration Imposition Act 2012

Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019

Section 13 of the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Levy Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 7 of the *Business Names Registration (Fees) Act 2011* (the Business Names Fees Act), section 8 of the *Corporations (Fees) Act 2001* (the Fees Act), section 10 of the *National Consumer Credit Protection (Fees) Act 2009* (the Credit Fees Act), and section 5 of the *Superannuation Auditor Registration Imposition Act 2012* (the Superannuation Auditor Registration Act) provide that the Governor-General may make regulations for the purposes of the prescribed sections of the respective Acts.

The purpose of the *Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019* (the Regulations) is to amend the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Levy Regulations), the *Business Names Registration (Fees) Regulations 2011* (the Business Names Fees Regulations), the *Corporations (Fees) Regulations 2001* (the Fees Regulations), the *National Consumer Credit Protection (Fees) Regulations 2010* (the Credit Fees Regulations) and the *Superannuation Auditor Registration Imposition Regulation 2012* (the Superannuation Auditor Registration Regulations) to:

- create a new subsector to enable the Australian Securities and Investments Commission (ASIC) to recover its regulatory costs incurred from its close and continuous monitoring of certain significant financial institutions;
- exempt journalists from paying certain registry search fees;
- reduce the inspecting roles and relationships search fee from \$40 to \$19;
- update certain existing fees so that they reflect ASIC's regulatory costs; and
- make other minor amendments to the Levy and Fees Regulations.

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

Public consultation on the Regulations was conducted between 22 January 2019 and 8 February 2019. There were 23 submissions received through the consultation process from various industry participants, industry bodies, media organisations and

individuals. There have been no changes to the Regulations as a result of the submissions.

The Business Names Fees Act, the Fees Act, the Credit Fees Act and the Superannuation Auditor Registration Act do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Levy Act requires the Minister to be satisfied that the Regulations are consistent with the objectives of the cost recovery regime in subsection 9(2) of the Levy Act.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Sections 1 to 4 and Schedule 1 to the Regulations commence on the day after registration. Part 1 of Schedule 2 commences on 1 April 2019 and Part 2 of Schedule 2 commences on 1 July 2019.

Details of the Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019

This attachment sets out further details of the *Treasury Laws Amendment (ASIC Cost Recovery and Fees Regulations 2019)* (the Regulations). The Regulations provide for amendments to the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Levy Regulations), the *Business Names Registration (Fees) Regulations 2011* (the Business Names Fees Regulations), the *Corporations (Fees) Regulations 2001* (the Fees Regulations), the *National Consumer Credit Protection (Fees) Regulations 2010* (the Credit Fees Regulations) and the *Superannuation Auditor Registration Imposition Regulation 2012* (the Superannuation Auditor Registration Regulations).

Part 1 – Preliminary

Section 1 – Name

This section provides that the title of the instrument is the *Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019*.

Section 2 – Commencement

This section provides that sections 1 to 4 and Schedule 1 (supervisory cost recovery levy changes) commence on the day after registration. Part 1 of Schedule 2 (regulatory fee changes) commence on 1 April 2019. Part 2 of Schedule 2 (journalists' exemption from paying search fees, roles and relationships search fee, indexation, and minor technical amendments to Fees Regulations) commence on 1 July 2019.

Section 3 - Authority

This section provides that the Regulations are made under the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Levy Act), the *Business Names Registration (Fees) Act 2011* (the Business Names Fees Act), the *Corporations (Fees) Act 2001* (the Fees Act), the *National Consumer Credit Protection (Fees) Act 2009* (the Credit Fees Act), and the *Superannuation Auditor Registration Imposition Act 2012* (the Superannuation Auditor Registration Act).

Section 4 – Schedules

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

Schedule 1 – Supervisory cost recovery levy

Items 2 and 3 of Schedule 1 amend the Levy Regulations to provide for a new subsector to enable ASIC to recover its regulatory costs incurred from its close and continuous monitoring of certain significant financial institutions.

An entity falls into the close and continuous monitoring subsector in the financial years beginning on 1 July 2018 and 1 July 2019 if:

- the total value of deposits issued by the entity as at 1 July 2018 is at least \$100 billion; or
- there are 1,000 or more relevant providers (within the meaning of section 910A of *the Corporations Act 2001* (the Corporations Act)) registered on the Register of Relevant Providers (as per section 910A of the Corporations Act) on 1 July 2018 to provide personal advice to retail clients on behalf of the entity.

Entities that fall within the new subsector will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Levy Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared equally between all entities that meet the requirements as at 1 July 2018. ASIC will prescribe the number of entities that are part of the subsector as part of its annual legislative instrument.

Minor technical amendments to Levy Regulations

Item 1 of Schedule 1 makes a minor, technical amendment to ensure market participants are not captured in the securities dealers subsector. The amendment ensures that the securities dealers subsector captures trading in securities on Australia's largest securities exchanges by Australian Financial Service licensees that are not themselves market participants. ASIC's regulatory costs of market participants will be recovered elsewhere as those entities are captured in other subsectors such as the large futures exchange participants subsector and the large securities exchange participants subsector.

Schedule 2 – Fees

Journalists' exemption from paying search fees

Under the Business Names Fees Regulations, the Fees Regulations, and the Credit Fees Regulations, ASIC charges certain fees for its registry services. Items 6, 9, 10, 11, 12, 14, 17, and 18 of Schedule 2 provide for journalists to be exempt from paying certain search fees for ASIC registry searches.

The term journalist is not a defined term for the purposes of the Regulations, so will take on its ordinary meaning.

The intention is that this will cover journalists working in a professional capacity for media organisations and freelance journalists who regularly sell stories to media organisations or publish stories on a commercial basis.

The ordinary meaning of journalist does not cover bloggers who blog in their free time or as a hobby and does not include non-journalistic entities such as social media platforms.

ASIC may also issue guidance in relation to how ASIC will administer the exemption for journalists from ASIC search fees. ASIC will have a process to periodically certify the journalists' eligibility for the exemption.

Certain news organisations such as the Australian Broadcasting Corporation, Special Broadcasting Service, Australian Bureau of Statistics and commercial broadcasters and newspaper organisations are exempt from paying certain search fees. These arrangements continue to be in place.

Business names fees

The Business Names Fees Regulations are amended to exempt journalists from paying search fees for the following extracts from the Business Names Register:

- extracts containing current information relating to either one business name or one entity (item 6 of Schedule 2);
- extracts containing current and non-current information relating to either only one business name or one entity (item 6 of Schedule 2);
- extracts relating to business names currently or previously registered to an entity (item 6 of Schedule 2).

Corporation fees

The Fees Regulations are amended to exempt journalists from paying search fees for:

- obtaining extracts of a company, registered scheme or notified foreign passport fund (item 9 of Schedule 2);
- inspecting or requesting an inspection of the Register of Licence Holders, the Register of Futures Licensees, the Register of Auditors or the Register of Liquidators (item 10 of Schedule 2);
- inspecting or requesting an inspection of the Register of Passport Funds (item 11 of Schedule 2);
- financial services extracts (item 11 of Schedule 2);
- inspecting or requesting an inspection of the Australian Register of Company Charges (item 11 of Schedule 2); and
- the issuing of a document relating to recorded entries about a corporation, registered scheme or a notified foreign passport fund in relation to roles and relationships (item 12 of Schedule 2).

Credit fees

The Credit Fees Regulations are amended to exempt journalists from paying search fees for:

- extracts of particulars in relation to credit licensees, credit representatives, a registered person or a person or entity whose details are kept in a register that ASIC is required to keep (item 14 of Schedule 2); and
- the inspection of a document register or document – including documents lodged under the *National Consumer Credit Protection Act 2009*

(the National Credit Act), and documents that have been lodged with ASIC that will be included in a register and in relation to which ASIC has permitted the document register to be inspected (item 14 of Schedule 2).

Superannuation Auditor Fees

The Superannuation Auditor Registration Regulations are amended to exempt journalists from paying search fees for:

- inspecting or searching a register kept under Division 1A of Part 16 of the *Superannuation Industry Supervision Act 1993* (SIS Act) for a historic search in relation to the registration of approved self-managed superannuation fund auditors (item 18 of Schedule 2); and
- inspecting or searching an extract given to or issued by the regulator under Division 1A of Part 16 of the SIS Act in relation to the registration of approved self-managed superannuation fund auditors (item 18 of Schedule 2).

Roles and relationships search fee reduced to \$19

Items 13 and 18 of Schedule 2 reduce the search fee for inspecting roles and relationships from \$40 to \$19. The new reduced fee applies from 1 July 2019 and applies to everyone, unless an exemption is provided. If an exemption is provided no fee is applicable.

Indexation

Items 8 and 19 of Schedule 2 ensure that the search fee for inspecting roles and relationships is the fee stated in the column (\$19) and that indexation will not apply until 1 July 2020 for that search fee.

Minor technical amendments to Fees Regulations

Item 7 of Schedule 2 makes a minor technical amendment to clarify that two or more fees can be charged for a single item. For example the regulations may prescribe two or more fees (including 'no fee') to differentiate based on the person paying the fee.

Items 15 and 16 of Schedule 2 make consequential amendments to update and insert certain headings in the Superannuation Auditor Registration Regulations.

Regulatory fee changes

Methodology for ASIC fees

The methodology for calculating the fees ASIC charges for its regulatory services is based on the Australian Government Cost Recovery Guidelines and the model design objectives to ensure a close alignment with ASIC's actual costs in undertaking the regulatory activities.

The fee for each activity is calculated using a weighted average hourly rate (calculated for each team associated with the form, and including indirect costs)

multiplied by the regulatory effort (that is, the average number of hours) required to assess and process each type of activity.

ASIC is able to apply tiered charges to reflect the associated effort when providing its regulatory service where there is considerable variance in the actual process or assessment. Different weighted costs are applied (reflecting where certain activities require the input of more than one ASIC team) to ensure the fee more accurately captures ASIC's costs.

In some cases, the Fees Regulations provide for different fees based on the entity type, whether a document is lodged electronically or in paper and by the complexity of the application.

Updating ASIC fees

The Regulations update certain fees in the Fees Regulations to more closely reflect the costs incurred by ASIC.

The Regulations also provide for tiered charges to apply to variations of an:

- Australian Market Licence application; and
- Australian clearing and settlement facility licence application.

Item 1 of Schedule 2 provides for the tiered fees ASIC can charge for an Australian market licence imposition, variation or revocation of conditions under subsection 796A(2) of the Corporations Act.

The criteria for determining the type of application for a particular service where the charge is to be tiered will be determined by ASIC via a legislative instrument. The instrument will allow the applicant to know which 'category' they fall under, and therefore what fee they will be expected to pay.

Item 2 of Schedule 2 provides for the tiered fees ASIC can charge for an Australian clearing and settlement licence imposition, variation or revocation of conditions under subsection 825A(2) of the Corporations Act.

The criteria for determining the type of application for a particular service where the charge is to be tiered will be determined by ASIC via a legislative instrument. The instrument will allow the applicant to know which 'category' they fall under, and therefore what fee they will be expected to pay.

Item 3 of Schedule 2 provides that the prescribed fee for lodging an application to ASIC under subsection 218(2) of the Corporations Act to approve a shorter notice period when obtaining member approval for a related party transaction is \$130.

Item 4 of Schedule 2 provides that the prescribed fee for an auditor when lodging a notice to ASIC under section 329 of the Corporations Act, applying for consent of their resignation, is \$40.

Item 5 of Schedule 2 provides that the prescribed fee for lodging an application to ASIC for a no-action letter under National Credit Act and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* is \$3,487.

The provision of a no-action letter is a chargeable matter under the Credit Fees Act as it is an application to ASIC in relation to a matter arising under that Act.

A person may apply to ASIC for a no-action letter. A no-action letter states to a particular person that ASIC does not intend to take regulatory action over a particular state of affairs or particular conduct. A no-action letter is used to provide some level of certainty to the applicant on the basis that ASIC does not currently foresee that it will take regulatory action in relation to the conduct. It is not, however, a guarantee that ASIC will not take action in the future, nor is it intended to affect the rights of third parties to take action in relation to any contravention. No-action letters are not legal advice and may be withdrawn at any time by ASIC.