

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Corporations (Review Fees) Act 2003

Corporations (Review Fees) Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022

The *Corporations (Review Fees) Act 2003* (Review Fees Act) provides that fees may be payable where registration under the *Corporations Act 2001* (Corporations Act) is subject to periodic review by the Australian Securities and Investments Commission.

Section 8 of the Review Fees Act empowers the Governor-General to make regulations prescribing fees for chargeable matters. Subsection 6(1) of the Fees Act provides that a fee may be prescribed by specifying an amount not exceeding \$10,000.

The purpose of the *Corporations (Review Fees) Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022* (the Regulations) is to support the operation of the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* (CCIV Act). The CCIV Act inserts new Chapter 8B into the Corporations Act and makes other related amendments to establish a corporate collective investment vehicle (CCIV) as a new type of company limited by shares and used for funds management. Establishing CCIVs in Australia is intended to increase the competitiveness of Australia's managed funds industry by providing an internationally recognisable corporate vehicle as an alternative to a trust-based managed investment scheme (MIS). The regulatory framework established by the CCIV Act aims to provide regulatory parity, as far as is practicable, between a CCIV and a MIS.

The Regulations amend the *Corporations (Review Fees) Regulations 2003* (the Review Fees Regulations) to prescribe the fees payable for review of a CCIV's registration. As a CCIV is a company, its registration will be reviewed annually under Part 2N.1 of the Corporations Act. The CCIV may elect to pay an annual review fee or a discounted up-front fee covering 10 annual reviews.

The Regulations prescribe an annual fee of \$1,281 and an up-front fee of \$9,851. These fees are equal to the indexed fees payable in relation to a MIS in the 2021-22 financial year. Both fees are below the \$10,000 limit imposed by subsection 6(1) of the Review Fees Act.

The Review Fees Act provides that the fees imposed under that Act are those prescribed by the Review Fees Regulations (see section 5). Prescribing fees in regulations is appropriate to maintain consistency with the existing legislative framework and necessary to ensure that all fees for periodic reviews of registrations under the Corporations Act are co-located at a single point in the legislation.

Details of the Regulations are set out in Attachment A.

The Act does not specify any conditions that must be satisfied before the power to make Regulations may be exercised.

The CCIVs regime has been subject to several rounds of public consultation since 2016. Public consultation on the draft *Corporations and Other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022* took place from 21 December 2021 to 21 January 2022, with the accompanying Explanatory Statement stating that further regulations would be made to amend the Review Fees Regulations in respect of CCIVs. No comments were received in relation to this approach in any submissions or in targeted stakeholder discussions during the consultation process. It was not considered necessary to undertake specific consultation on this instrument as the collection of fees for annual reviews under the Corporations Act is a longstanding and well understood aspect of corporations law. In particular, this instrument does not alter the nature or scope of the reviews subject to fees under the Review Fees Act, it simply prescribes the value of those fees in relation to CCIVs.

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

The Regulations are exempt from sunseting as section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* exempts regulations made under the Review Fees Act from sunseting. Regulations made under that Act were exempted as they are part of the Corporations Agreement 2002, an intergovernmental scheme between the Commonwealth, States and Territories, and support that scheme. However, as the Regulations are amending regulations, they will be automatically repealed by the operation of the *Legislation Act 2003*.

The Regulations will commence on the later of the day after the instrument is registered and 1 July 2022.

The Office of Best Practice Regulation has confirmed that the Regulations are covered by the Regulation Impact Statement found in the Explanatory Memorandum of the CCIV Act.

A statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the Corporations (Review Fees) Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Corporations (Review Fees) Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022* (the Regulations).

Section 2 – Commencement

The Regulations commence on the later of the day after the instrument is registered and 1 July 2022.

Section 3 – Authority

The Regulations are made under section 8 of the *Corporations (Review Fees) Act 2003*.

Section 4 – Schedules

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

Schedule 1 – Amendments to the Corporations (Review Fees) Regulations 2003 (Review Fees Regulations)

Items 1 to 4 – amendments to the Review Fees Regulations

Items 1 to 3 insert a note at the end of the definitions clarifying that expressions used in the Review Fees Regulations that are defined in the Corporations Act have the same meaning in the Review Fees Regulations as they do in the Corporations Act. This note confirms the application of section 4(2) of the Review Fees Act. It has been included to assist readers in understanding and interpreting the Review Fees Regulations.

Items 4 and 5 provide that new fees inserted by the Regulations will not be subject to indexation under regulation 4 in the financial year beginning 1 July 2022. The indexation applied by regulation 4 is calculated with reference to the previous year's amount. For new fees, there is no previous amount, so application of the indexing provisions would result in the fee being zero. From the financial year beginning 1 July 2023, indexation will apply as set out in regulation 4.

Item 6 – amendment to Part 1 of Schedule 1 to the Review Fees Regulations

Item 6 inserts new table item 102A prescribing an annual review fee of \$1,281 for a CCIV. This item prescribes the value of the review fee imposed by the Review Fees Act if it is paid annually at the time of review.

The effect of this item is that a fee of \$1,281 is payable for the annual review of a CCIV's registration under the Corporations Act, unless the CCIV satisfies the

definition of a ‘special purpose company’ under the Review Fees Regulations. The annual review fee for a special purpose company is prescribed by existing table item 103.

Item 7 – amendment to Part 1A of Schedule 1 to the Review Fees Regulations

Item 7 inserts new table item 102A prescribing an up-front review fee of \$9,851 for a CCIV. This item prescribes the value of the review fee imposed by the Review Fees Act if it is paid in advance.

The effect of this item is that an up-front fee of \$9,851 is payable for ten annual reviews of a CCIV’s registration under the Corporations Act, unless the CCIV satisfies the definition of a ‘special purpose company’ under the Review Fees Regulations. The up-front review fee for a special purpose company is prescribed by existing table item 103.

Statement of Compatibility with Human Rights

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

Corporations (Review Fees) Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022

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 Legislative Instrument amends the *Corporations (Review Fees) Regulations 2003* to prescribe the fees payable for review of a CCIV's registration under the *Corporations Act 2001*.

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.