

EXPLANATORY STATEMENT

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

Corporations (Fees) Act 2001

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

The *Corporations (Fees) Act 2001* (Fees Act) provides that various actions required or permitted under the *Corporations Act 2001* (Corporations Act) are chargeable matters, meaning they may attract a fee. Chargeable matters include the lodgement or registration of documents under the Corporations Act and the issue of a licence, consent or approval under the Corporations Act.

Section 8 of the 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 either a specified amount, not exceeding \$200,000, or a specified method for calculating an amount.

The purpose of the *Corporations (Fees) and Other Legislation 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 (Fees) Regulations 2001* (the Fees Regulations) to ensure that existing fees apply appropriately to CCIVs and to prescribe new fees for chargeable matters under Chapter 8B of the Corporations Act.

In some cases, chargeable matters in relation to a CCIV are already provided for in the Fees Regulations. For example, because a CCIV is a company, an application to register a CCIV will attract the specified fee for an application to register a company under the Corporations Act. Other fee items require amendment to ensure that existing fees for chargeable matters apply appropriately in relation to CCIVs. In addition, the Regulations prescribe fees for new chargeable matters under Chapter 8B, such as lodgement of a notice that a CCIV intends to change its status from wholesale to retail (or vice versa).

The new and amended fees prescribed by the Regulations range in value from \$83 to \$8,862.72. All fees are below the \$200,000 limit imposed by paragraph 6(1)(a) of the Fees Act. Some new fee items specify that there is no fee applicable to a chargeable matter under the Corporations Act. This is because a default fee applies to applications under the Corporations Act unless otherwise specified. Where a new

chargeable matter is equivalent to an existing chargeable matter in relation to a MIS, the prescribed fee is the same amount for both chargeable matters, including where there is no fee.

The Fees Act provides that the fees imposed under that Act are those prescribed by the 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 chargeable matters 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 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 administrative actions 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 matters that are chargeable under the Fees Act, it simply prescribes the values of fees for those matters.

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 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 (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 (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 (Fees) Act 2001* (Fees Act).

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 (Fees) Regulations 2001 (Fees Regulations)

Items 1 to 4 – amendments to the Fees Regulations

Items 1 to 3 insert a note at the end of the definitions clarifying that expressions used in the Fees Regulations that are defined in the Corporations Act have the same meaning in the Fees Regulations as they do in the Corporations Act. This note confirms the application of subsection 4(2) of the Fees Act. A version of this note was appended to the definition of ‘member of ASIC’. It has been moved to the end of the section to make clear that it applies to the Fees Regulations as a whole, and not just that expression.

Item 4 provides that new fees inserted by the Regulations will not be subject to indexation under regulation 3 in the financial year beginning 1 July 2022. The indexation applied by regulation 3 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 3.

Items 5 to 12 – amendments to Schedule 1 to the Fees Regulations

Items 5 and 6 insert a note at the start of Schedule 1 to confirm that existing fees in respect of a company or corporation may also apply to a CCIV.

Item 7 amends a reference to reflect the renumbering of the definitions section as a result of items 1 to 3.

Table items 79A and 79B prescribe fees in relation to registration as an Australian passport fund. Item 8 of the Regulations amends these items to replace ‘managed investment scheme’ with ‘collective investment fund’. The CCIV Act amends Chapter 8A of the Corporations Act to provide that a collective investment fund may be registered as an Australian passport fund. A collective investment fund may be either a managed investment scheme or a sub-fund of a retail CCIV (see section 1212).

Table item 80 provides that a fee applies to certain applications to the Minister or ASIC under the specified provisions of the Corporations Act. Item 9 of the Regulations amends table item 80(a) to include Chapter 8B of the Corporations Act. This ensures that the existing fee structure applies to the new Chapter 8B in the same way as it applies to other existing chapters of the Act.

Item 10 amends existing table items 83 and 84 to clarify that applications for the appointment or removal of an auditor under section 331AAC(1)(b) and subsections 331AC(1) or (2) of the Corporations Act may also be made by a retail CCIV.

Item 11 inserts new table items 105A and 105B prescribing fees for two chargeable matters under Chapter 8B of the Corporations Act:

- For an application for ASIC’s consent to the removal of an auditor of a CCIV’s compliance plan, a fee of \$791 applies; and
- For an application for ASIC’s consent to the resignation of an auditor of a CCIV’s compliance plan, no fee applies.

Item 12 inserts new table items 149A, 149B and 149C prescribing a fee of \$1,187 for lodgement of any of the following under Chapter 8B of the Corporations Act:

- Lodgement with ASIC of a notice relating to a change in corporate director of a CCIV;
- Lodgement of a notice informing ASIC of the appointment of a temporary corporate director of a CCIV; or
- Lodgement of a notice asking ASIC to alter the record of a CCIV’s registration to name a new corporate director.

Items 13 to 19 – amendments to Schedule 2 to the Fees Regulations

Items 13 and 14 insert a note at the start of Schedule 2 to confirm that existing fees in respect of a company or corporation may also apply to a CCIV.

Item 15 inserts new table items 1A to 1C prescribing fees for three chargeable matters under Chapter 8B of the Corporations Act. The effect of this item is that fees would apply in the following circumstances:

- For an application to register a new sub-fund of an existing CCIV, no fee applies;
- For lodgement of a notice stating that a CCIV is or wishes to become a retail CCIV, a fee of \$83 applies; and
- For lodgement of a notice stating that a CCIV is or wishes to become a wholesale CCIV, a fee of \$83 applies.

Item 16 inserts new table items 12E and 12F to specify that no fee applies for lodgement of an application to change the name of a sub-fund of a CCIV or an application to deregister a sub-fund of a CCIV.

Item 17 amends table items 15 and 16 to ensure that existing fees for the issue, display or inspection of documents relating to company or MIS also apply where the documents relate to a CCIV or a sub-fund of a CCIV.

Statement of Compatibility with Human Rights

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

Corporations (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 (Fees) Regulations 2001* to ensure that existing fees apply appropriately to Corporate Collective Investment Vehicles and to prescribe new fees for chargeable matters under Chapter 8B of 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.