

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

#### *Corporations (Fees) Act 2001*

#### *Corporations (Fees) Amendment (RSE Auditors) Regulations 2024*

Section 8 of the *Corporations (Fees) Act 2001* (the Act) provides that the Governor-General may make regulations for the purposes of sections 5, 5A, 6 and 7 of the Act.

Section 5 of the Act provides that regulations may prescribe fees for chargeable matters. Section 6 provides that the regulations may prescribe a fee by specifying an amount as the fee, or by specifying a method for calculating the amount of the fee. Under paragraph 4(1)(f) of the Act, the granting of consent by ASIC is a chargeable matter.

The purpose of the *Corporations (Fees) Amendment (RSE Auditors) Regulations 2024* (Regulations) is to prescribe that there is no fee for applications made to the Australian Securities and Investments Commission (ASIC) for the resignation, removal or appointment of Registrable Superannuation Entity (RSE) auditors, in line with the treatment of similar entity types such as managed investment scheme auditors. RSE auditors and superannuation trustees must apply to ASIC for the appointment, resignation or removal of an RSE auditor under paragraph 331AJ(1)(b) or subsections 331AK(1) or (2) of the *Corporations Act 2001*. This requirement came into effect on 1 July 2023, when Schedule 6 of the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* commenced.

The Regulations commence the day after registration but have retrospective application from 1 July 2023. Retrospective application is appropriate because it will align with the introduction of the requirement for RSE auditors and superannuation trustees to apply to ASIC for the appointment, resignation or removal of an RSE auditor, as effected by Schedule 6 of the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*. This does not engage subsection 12(2) of the *Legislation Act 2003*, as it does not disadvantage any individual or impose a liability in respect of anything done or omitted to be done before the instrument is registered. Any application made from 1 July 2023 will not have any fee attached to it.

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

ASIC was consulted on this measure and supported the change. As this is a minor adjustment that ensures that no fee is charged, there was no public consultation on this measure.

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

The Regulations subject to the automatic repeal process under section 48A of the *Legislation Act 2003*. This section provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of paragraph 48A(2)(aa) of that Act, the Regulations automatically

repeal on the end of the last day on which the Regulations or a provision of the Regulations may be disallowed in a House of Parliament. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the Legislation Act 2003 is no longer relevant to the Regulations.

Details of the Regulations are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact Analysis has been (OIA) has been consulted and agreed that no impact analysis is required as this is a consequential to the amendments made by Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*.

**Details of the *Corporations (Fees) Amendment (RSE Auditors) Regulations 2024***

**Section 1 – Name**

This section provides that the name of the regulations is the *Corporations (Fees) Amendment (RSE Auditors) Regulations 2024* (the Regulations).

**Section 2 – Commencement**

The Regulations commence the day after registration.

**Section 3 – Authority**

The Regulations are made under the *Corporations (Fees) Act 2001* (the Act).

**Section 4 – Schedule**

This section provides that each instrument that is specified in the Schedules to this instrument are 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.

All legislative references are to the Regulations unless otherwise specified.

**Schedule 1 – Amendments**

**Item [1] – Clause 1 of Schedule 1 (table items 83 and 84)**

The Regulations amend table items 83 and 84 of clause 1 of Schedule 1 to the *Corporations (Fees) Regulations 2001* to prescribe the fee for ASIC to provide its consent to the removal or resignation of an auditor of an RSE on application under subsections 331AK(1) or (2) of the *Corporations Act 2001* as ‘no fee’. It also prescribes that an application for ASIC to appoint an auditor of an RSE under paragraph 331AJ(1)(b) will also have no fee.

**Item [2] – section 15**

Section 15 ensures that the prescribed fee applies to applications that were made on or after 1 July 2023, which is when the requirement for applications to be made for the appointment, removal or resignation of RSE auditors was first introduced. This aligns the Regulations with the requirements in the *Corporations Act 2001*.

**Statement of Compatibility with Human Rights**

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

**Corporations (Fees) Amendment (RSE Auditors) Regulations 2024**

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 purpose of the *Corporations (Fees) Amendment (RSE Auditors) Regulations 2024* (Regulations) is to prescribe that there is no fee for applications made to the Australian Securities and Investments Commission (ASIC) for the appointment, resignation or removal of Registrable Superannuation Entity (RSE) auditors, in line with the treatment of similar entity types such as managed investment scheme auditors.

The Regulation are consistent with fees for similar entities, and do not engage with any applicable rights or freedoms.

**Human rights implications**

These Regulations do not engage any of the applicable rights or freedoms.

**Conclusion**

These Regulations are compatible with human rights as it does not raise any human rights issues.