

EXPLANATORY STATEMENT

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

Corporations (Review Fees) Act 2003

Corporations (Review Fees) Regulations 2003

The *Corporations (Review Fees) Act 2003* (the Act) permits a fee known as a ‘review fee’ to be imposed.

Section 8 of the Act provides that the Governor-General may make regulations for the purposes of the Act and section 1351 of the *Corporations Act 2001*. Subsection 6(1) of the Act allows review fees to be prescribed by specifying an amount of up to \$10,000.

Section 5 of the Act provides that the regulations may prescribe fees in relation to review dates for companies, registered schemes and certain natural persons and entities. These fees are imposed as taxes.

The purpose of the *Corporations (Review Fees) Amendment (2025 Measures No. 1) Regulations 2025* (the Regulations) is to amend the Principal Regulations to ensure the correct amount of late fees, 10-year upfront fees and certain annual fees for special purpose companies are charged by the Australian Securities and Investments Commission (ASIC). The amendments ensure that ASIC is authorised to collect the amount of review fees consistent with the intended policy outcome. This overcomes an inconsistency that otherwise arises between the Principal Regulations and the policy intent.

The *Corporations (Review Fees) Amendment Regulations 2011 (No. 1)* made amendments to the Principal Regulations to increase the base rate for certain review fees and continue the annual indexation of those fees using the increased base rate. These amendments also reinserted the same base fee for some review fees and other review fees were not amended. The indexation provisions applied for all review fees, which did not reflect the intended policy outcome at the time. As a result, ASIC applied an indexation methodology which resulted in incorrect amounts of certain review fees being charged. The Regulations ensure that ASIC is authorised to charge and collect the correct amount of review fees in accordance with the intended policy outcome.

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 the changes in the Regulations. Public consultation on the Regulations was not undertaken as the Regulations ensure that ASIC is authorised to charge and collect the correct amount of review fees in accordance with the intended policy outcome and are considered to be machinery in nature. The Regulations ensure that the current level of review fees that ASIC charge are maintained.

The Legislative and Governance Forum on Corporations was notified of the changes.

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

The Regulations are disallowable. The Regulations are exempt from sunseting as regulation 12 (see item 18B) of the *Legislation (Exemptions and Other Matters) Regulation 2015* exempts regulations made under the Act from sunseting. The Act enables the imposition of fees and taxes in respect of certain prescribed review dates and is part of the Corporations Agreement 2002, an intergovernmental scheme between the Commonwealth, States and Territories. Regulations made under the Act support the intergovernmental scheme. Accordingly, it is appropriate that the regulations are exempt from sunseting on the basis that they are part of intergovernmental schemes.

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

The Regulations commence on the day after registration.

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 (OIA) has been consulted (OIA ref: OIA25-09190) and agreed that a Detailed Impact Analysis is not required.

Details of the Corporations (Review Fees) Amendment (2025 Measures No. 1) Regulations 2025

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Corporations (Review Fees) Amendment (2025 Measures No. 1) Regulations 2025* (the Regulations).

Section 2 - Commencement

This section provides that the Regulations commence on the day after it is registered.

Section 3 - Authority

This section provides that the *Corporations (Review Fees) Amendment (2025 Measures No. 1) Regulations 2025* are made under the *Corporations (Review Fee) Act 2003* (the Act).

Section 4 - Schedule(s)

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

Schedule 1 – Amendments

Items [1], [2], [3], [5] and [10]– Subregulations 3(1), 4(1), 4(2) and 5(3)

Item 1 clarifies and moves the definition of ‘financial year’ to the ‘definitions’ provisions in the Regulations. Item 10 makes a consequential amendment to repeal subregulation 5(3) as the definition of financial year has now been inserted in subregulation 3(1). These amendments ensure that all definitions as defined under the Regulations can be found in one place.

Items 2, 3 and 5 make minor drafting amendments to Regulation 4 to reflect current drafting practices by replacing references to ‘Part’ with ‘the table in clause’.

Item [4] – Paragraph 4(2)(b)

Item 4 makes a minor technical correction to refer to ‘subregulation’.

Item [6] – Subregulation 4(4)(b)

Item 6 repeals subregulation 4(4)(b) and substitutes it with a new provision which clarifies that the amount of the fee is set out in the schedule in the Regulations, however if the amount is more than \$10,000, then the maximum fee payable is \$10,000.

Item [7] – Subregulation 4(5)

Item 7 repeals subregulation 4(5) and substitutes it with a new provision which clarifies the amount of a review fee for the financial year starting on 1 July 2024.

Item [8] – Subregulations 4(6) and 4(7)

Item 8 amends the date from 2012 to 2025 to ensure the formula for determining the amount of a review fee is to continue to apply from the financial year starting on 1 July 2025 using the previous indexable amount under new subregulation 4(5).

Item [9] – Subregulation 4(7A)

Item 9 repeals subregulation 4(7A). This subregulation is no longer required as the updated review fee for a proprietary company is now reflected in Schedule 1.

Item [11] – At the end of Part 3

Item 11 inserts Division 2 which sets out the application of amendments made by the Regulations and provides for transitional arrangements.

Transitional arrangements are provided for entities who have paid the fee prior to the commencement of the Regulations. If a company, registered scheme or notified passport fund has paid the fee specified in the regulations (as in force at the time of payment) before a review is conducted, it is not required to pay another fee in relation to review dates for a period of 10 years starting from when they paid the fee.

In the financial year starting on 1 July 2024, the amount of the fee in relation to a review date occurring on or after commencement of the Regulations is the amount mentioned under new Schedule 1 to the Regulations.

Item 11 provides that in the financial year starting from 1 July 2025, the amount of a fee in relation to a review date is the amount determined by the formula as set out in subregulations 4(6) and 4(7), using the previous indexable amount for the financial year starting from 1 July 2024 as prescribed in new subregulation 4(5).

Item [12] – Schedule 1

Item 12 repeals the Schedule and substitutes it with a new schedule which sets out the review fees for annual fees, upfront fees and late fees. This new schedule inserts fee amounts which ensure ASIC is authorised to collect the correct amount of review fees in accordance with the intended policy outcome. The amount of a review fee is the amount specified under Schedule 1 to the Regulations.

This item also removes references to ‘persons’.

Statement of Compatibility with Human Rights

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

Corporations (Review Fees) Amendment (2025 Measures No. 1) Regulations 2025

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 *Corporations (Review Fees) Act 2003* (the Act) permits a fee known as a ‘review fee’ to be imposed.

Section 8 of the Act provides that the Governor-General may make regulations for the purposes of the Act and section 1351 of the *Corporations Act 2001*. Subsection 6(1) of the Act allows review fees to be prescribed by specifying an amount of up to \$10,000. Section 5 of the Act provides that the regulations may prescribe fees in relation to review dates for companies, registered schemes and certain natural persons and entities. These fees are imposed as taxes.

The *Corporations (Review Fees) Amendment (2025 Measures No. 1) Regulations 2025* (the Regulations) amends the *Corporations (Review Fees) Regulations 2003* (the Principal Regulations) to ensure the correct amount of late fees, 10-year upfront fees and certain annual fees for special purpose companies are charged by the Australian Securities and Investments Commission (ASIC). The amendments intend to ensure that ASIC is authorised to collect the amount of review fees consistent with the intended policy outcome. This overcomes an inconsistency that otherwise arise between the Principal Regulations and the policy intent.

The *Corporations (Review Fees) Amendment Regulations 2011 (No. 1)* makes amendments to the Principal Regulations to increase the base rate for certain review fees and continue the annual indexation of those fees using the increased base rate. These amendments also reinsert the same base fee for some review fees and other review fees were not amended. The indexation provisions applied for all review fees, which did not reflect the intended policy outcome at the time. As a result, ASIC applied an indexation methodology which resulted in an incorrect amounts of certain review fees being charged. The Regulations ensure that ASIC is authorised to charge and collect the correct amount of review fees in accordance with the intended policy outcome.

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.