

## **EXPOSURE DRAFT EXPLANATORY STATEMENT**

**Issued by authority of the Minister for Revenue and Financial Services, Minister for Women and Minister Assisting the Prime Minister for the Public Service.**

*Corporations (Fees) Act 2001*

*National Consumer Credit Protection (Fees) Act 2009*

*Superannuation Auditor Registration Imposition Act 2012*

*Treasury Laws Amendment (ASIC Fees) Regulations 2018*

Section 8 of the *Corporations (Fees) Act 2001* (the Corporations 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*, 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.

The purpose of the *Treasury Laws Amendment (ASIC Fees) Regulations 2018* (the Regulations) is to amend the *Corporations (Fees) Regulations 2001* (Fees Regulations), *National Consumer Credit Protection (Fees) Regulation 2010* (Credit Fees Regulations) and the *Superannuation Auditor Registration Imposition Regulation 2012* to:

- prescribe the cost reflective fees that the Australian Securities and Investments Commission (ASIC) can charge for the services it provides for a specific entity;
- provide a tiering regime for fees to ensure entities pay the appropriate fee based on the complexity of the service;
- update the hourly rate that ASIC charges, to ensure the rate closely reflects the costs incurred by ASIC;
- provide that indexation will only apply to registry fees; and
- ensure that fees that are no longer required to be charged have ‘no fee’.

Details of the Regulations are set out in the Attachment.

The Acts do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

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

The Regulations commence on 1 July 2018.

## Attachment

This Attachment sets out the details of the *Treasury Laws Amendment (ASIC Fees) Regulations 2018*.

### ASIC fees update

The proposed methodology for calculating the cost of 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 includes indirect costs) multiplied by the regulatory effort (that is, the average number hours) required to assess and process each type of activity.

The fees in the Fees Regulations have been updated to closely reflect the costs incurred by ASIC relating to anything done under the Corporations Act. Where applicable, the Regulations may provide for different fees based on the entity type, whether the document is lodged electronically or by paper format and by the complexity of the application.

The fees in the Credit Fees Regulations have been updated to closely reflect the costs incurred by ASIC relating to credit activities done under the *National Consumer Credit Protection Act 2009*.

Fees relating to an application to be a self-managed superannuation fund (SMSF) auditors have been updated to closely reflect the costs incurred by ASIC. ASIC will also be able to charge new fees relating to an application to vary or revoke the conditions or cancel the registration of an approved SMSF auditor.

The fees amendments will be made to the fees schedules in the Regulations. The marked up versions of the amended tables have been included for the purposes of consultation.

### Tiering regime for some fees.

ASIC may be able to apply tier charges to reflect the associated effort when providing their 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.

This will ensure entities pay the appropriate fee based on the complexity of the transaction for the service ASIC provides and allows ASIC to closely recover its true cost.

Tiered charges are to apply to the following forms: Australian Financial Services Licence applications (electronic and paper); Licence Authorisation Variation applications (electronic and paper); Australian Credit Licence applications; Applications to vary authorisations or conditions of an Australian Credit Licence;

Australian Markets Licence applications; Markets - Notice of changes to operating rules Section 793D; Markets - Notice of changes to operating rules Section 822D; and Australian clearing and settlement facility licence applications.

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 legislative instrument. The instrument will be released publicly by ASIC and will allow the applicant to know which 'category' they fall under, and therefore what fee they will be expected to pay.

#### Hourly rate

Regulation 5 of the Fees Regulations provides for the formula that ASIC uses to charge fees in relation to granting market licences and dealing with potential conflict and that the fee is the hourly rate times the number of minutes taken divided by 60. The hourly rate will increase from \$70 to \$175.95, to closely reflect the costs ASIC incurs.

#### Indexation

Indexation will not apply to regulatory fees, as regulatory fees are being cost recovered and will be reviewed every three years by ASIC. Indexation will continue to apply to registry fees. Registry fees relate to registry services where ASIC updates its registry database

The registry fees in the exposure draft reflect the fee as at 1 July 2017. The 1 July 2018 figure has not been used for the exposure draft as at the time of release the Australian Bureau of Statistics had not release the Consumer Pricing Index for the quarter ended 31 March 2018. Indexation for registry fees will continue to apply from the 1 July 2018 year.

#### 'No Fees'

Under items 27, 39 and 40 of the Fees Regulations, ASIC is allowed to charge for fees that are not provided for by any other item. Some fees have been updated to be 'no fee' to ensure ASIC cannot charge a fee for those items. These fees do not need to be cost recovered, as the fees relate to the supervision of the industry rather than the benefit of the entity.