

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No.**

Issued by the Authority of the Minister for Financial Services, Superannuation and Corporate Law

*National Consumer Credit Protection (Fees) Act 2009*

*National Consumer Credit Protection (Fees) Regulations 2009*

The *National Consumer Credit Protection (Fees) Act 2009* (Fees Act) allows for the imposition of fees for things done under the *National Consumer Credit Protection Act 2009* (Credit Act) and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act) such as the lodgment of documents or the inclusion of a document in, or inspection of, a register maintained by the Australian Securities and Investments Commission (ASIC).

Sections 5 and 6 of the Fees Act provide that regulations may prescribe fees and for chargeable matters under the Credit Act. Section 7 of the Fees Act allows for different fees for electronic compliance and Section 8 of the Fees Act allows for different fees for number of representatives of person by whom a fee for chargeable matter is payable. Section 10 of the Fees Act provides that the Governor-General may make regulations for the purposes of sections 5, 6, 7 and 8.

Section 231 of the Credit Act provides that fees imposed under the Fees Act are payable to the Commonwealth. These fees may be collected by ASIC, on behalf of the Commonwealth. Section 235 of the Credit Act gives the Commonwealth discretion to reduce, wave or refund fees in a particular case, or classes of cases, that would otherwise be payable under the Credit Act.

The purpose of the Regulations is to prescribe amounts payable for chargeable matters under the Fees Act. Regulations 1 to 4 set out fees payable for chargeable matters. Details of the regulations appear in the Attachment.

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

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

The Regulations will commence on same day as the Fees Act.

***DETAILS OF THE NATIONAL CONSUMER CREDIT PROTECTION (FEES) REGULATIONS 2009***

Regulation 1 – Name of Regulations

Regulation 1 provides that the name of the Regulations to be the National Consumer Credit Protection (Fees) Regulations 2009.

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence on the same day as the Fees Act.

Regulation 3 – Definitions

Regulation 3 defines words and expressions that are used in the regulations.

Regulation 4

Regulation 4 sets the amount of fees payable for chargeable matters as permitted under sections 5 and 6 of the Fees Act.

Subregulation 4(3) provides for a lower fee for Authorised Deposit-taking Institutions (ADIs) and persons applying for a streamlined process under section 39 of the Credit Act. It is considered that ADIs, and other applicants eligible to use the streamlined process, are subject to levels of government supervision that are sufficiently rigorous so that they do not need to demonstrate, in order to obtain a licence, their competencies and qualifications.

Subregulations 4(4) and (5) prescribes fees for the late lodgement of documents to encourage the provision of timely information and ensure the registers and information maintained by ASIC are up to date.

The late fees apply in addition to the amount, if any, prescribed in Schedule 1.

Subregulation 4(6) prescribes a fee of \$10 for the inspection of, or inquiry relating to, a credit register under section 214 of the Credit Act and a fee of \$25 for inspection of, or inquiry relating to, a document register under section 219 of the Credit Act.

Subregulation 4(7) exempts Commonwealth agencies, Commonwealth authorities, Commonwealth companies, and certain media outlets from being charged fees for inspection of, or inquiry relating to, a credit or document register.

Higher fees apply for non-electronic lodgment of applications or documents as permitted under section 7 of the Fees Act. The non-electronic lodgment of a document will attract an additional fee regardless of whether a fee has been prescribed for that matter.

## Schedule 1

Schedule 1 sets out fees for chargeable matters under the Credit Act and Transitional Act.

**Item 1** prescribes fees for lodgment of an application to be licensed under subsection 36(1) of the Credit Act. Fees for lodgment of licensing application are based on the number of representatives of a person engaged in credit activities as permitted under section 8 of the Fees Act.

For registered persons, the number of representatives for this item will be the number of representatives at the time of lodgment of the application.

For unregistered persons, the number of representatives will be the number of representatives the person could reasonably expect to have on commencement of engaging in credit activities if the license is granted.

**Item 2** prescribes fees for lodgment of an annual compliance certificate under subsection 53(1) of the Credit Act. Fees for the lodgment of the annual compliance certificate are also based on the number of representatives of a person engaged in credit activities as permitted under section 8 of the Fees Act.

The number of representatives for this item will be the number of representatives on the licensee's licensing anniversary.

For the purposes of items 1 and 2, part-time employees have been taken to be an appropriate fraction of a full-time equivalent.

**Items 3 to 13** prescribe fees for the lodgment of certain applications and notices.

Fees for lodgment of certain applications and notices that support the integrity of registers will attract no fee, while the lodgment of other applications, notices and documents will attract a \$100 fee.

This fee structure has been designed to promote certainty and simplicity, whilst also encouraging the provision of information that would maintain the integrity registers and support compliance with the Credit Act.

No fee is payable for the lodgment of:

- a notice of authorisation, notice of a change to, or revocation of, an authorisation;
- an application to cancel or suspend a registration;
- an application to cancel or suspend a licence; and
- an application for an extension of time.

A fee of \$100 is payable for the lodgment of:

- a trust account statement and trust account audit report;
- an application to have conditions imposed, varied or revoked;

- an application for relief or exemption from all or any provisions of the National Credit Code or licensing and registrations requirements;
- an application for the variation or cancellation of a banning order
- a document to be included in a document register; and
- a document, notice or application not otherwise mentioned in regulation 4.

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