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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL CONSUMER CREDIT PROTECTION (FEES) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Human Services
Minister for Financial Services, Superannuation and Corporate Law
the Hon Chris Bowen MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investments Commission
COAG	Council of Australian Governments
Consumer Credit Protection Reform Package	National Consumer Credit Protection Bill 2009, National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009, and the National Consumer Credit Protection (Fees) Bill 2009
Credit Bill	National Consumer Credit Protection Bill 2009
Fees Bill	National Consumer Credit Protection (Fees) Bill 2009
Transitional Bill	National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009

General outline and financial impact

Outline

The National Consumer Credit Protection (Fees) Bill 2009 (Fees Bill), which accompanies the National Consumer Credit Protection Bill 2009 (Credit Bill) and the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 (the Transitional Bill), support the Commonwealth's regulation of consumer credit in Australia.

The Fees Bill enables the imposition of fees, as taxes, for things done under the Credit Bill and Transitional Bill, such as the lodgment of documents, or inclusion of a document in, or inspection of, a register maintained by the Australian Securities and Investments Commission (ASIC).

Date of effect: The Fees Bill commences at the same time as section 3 of the National Consumer Credit Protection Bill 2009.

Proposal announced: The proposal to transfer responsibility for regulating consumer credit to the Commonwealth was announced by the Council of Australian Governments (COAG) on 26 March, 3 July and 2 October 2008.

Financial impact: The Government has provided \$70.2 million over four years to implement the decision of COAG as part of the 2008-09 Mid-Year Economic and Fiscal Outlook. This Bill includes measures to give effect to that transfer.

The funding will support the establishment of a national licensing regime for providers of credit and credit services, with ASIC as the sole national regulator. It will also support the national regulation of mortgages, margin lending, personal loans, credit cards and pay day lending.

The funding will be partially offset by revenue raised from fees required to be paid by persons regulated by the national framework, payment of which commences during the 2009-10 financial year. The amount of revenue generated from these fees will depend, in part, on the number and type of persons seeking to be licensed.

Compliance cost impact: The main compliance cost impact arises in relation to persons who will be subject to the licensing regime. This will primarily involve the initial costs associated with applying for an Australian credit licence, which include the payment of fees to lodge application documentation with ASIC, annual compliance costs and costs of external dispute resolution membership.

Further details in relation to the compliance requirements associated with the licensing of providers of credit and credit services are set out in the Regulation Impact Statement accompanying the Credit Bill.

Summary of regulation impact statement

Regulation impact on business

Impact: A regulation impact statement was prepared for the Consumer Credit Protection Reform Package and is set out in the explanatory memorandum to the Credit Bill.

Chapter 1

Imposition of fees

Outline of chapter

1.1 The National Consumer Credit Protection (Fees) Bill 2009 (Fees Bill) allows for the imposition of fees for things done under the National Consumer Credit Protection Bill 2009 (Credit Bill) and the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 (Transitional Bill) 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).

Context of new law

1.2 Section 55 of the Constitution provides, in part, that laws imposing taxation shall deal only with imposing taxation, and any provision dealing with any other matter shall not be effective. To comply with this requirement, the Fees Bill, which imposes fees for chargeable matters as a tax, is a separate piece of legislation from the Credit Bill and the Transitional Bill.

1.3 The approach taken in the Fees Bill is generally consistent with the *Corporations (Fees) Act 2001* which deals with the imposition of fees under the *Corporations Act 2001*.

1.4 The fees imposed under the Fees Bill are payable to the Commonwealth (through ASIC) by the application of Part 5-4 of the Credit Bill.

Summary of new law

- 1.5 The Fees Bill contains provisions relating to the:
- imposition of fees for chargeable matters;
 - the ability to charge fees at different rates, for example depending on the method used to lodge a document or the number of representatives a person has; and

- assignment of liability for payment a fee.

Detailed explanation of new law

What is a chargeable matter?

1.6 The key provision in the Fees Bill is the definition of the term *chargeable matter*. It is defined broadly to mean any of the following:

- the lodgment of a document under the Credit Bill and Transitional Bill;
- the inclusion of a document in a register maintained under those Bills;
- the inspection or search of a register kept by, or a document in the custody of, ASIC under those Bills;
- the making available by ASIC, under those Bills, of information (whether in the form of a document or otherwise);
- the production by ASIC, under a subpoena, of such a register or document;
- the issuing of a document or of a copy of a document, the granting of a licence, registration, consent or approval, or the doing of any other act, under those Bills, by the Minister or ASIC;
- the making of an inquiry of, or an application to, the Minister, or ASIC, in relation to a matter arising under those Bills; and
- the submission to ASIC of a document for examination by ASIC.

[Subsection 4(1)]

Example 1.1

JJF Pty Ltd lodges an application for a licence to engage in credit activities with ASIC in accordance with section 35 of the Credit Bill.

The lodgment of an application by JJF Pty Ltd is a chargeable matter, for which a fee may be imposed.

Other definitions

1.7 A representative of a registered person is defined in section 4 of the Transitional Bill. A representative of a licensee, or in any other case, is defined in section 5 of the Credit Bill. *[Subsection 4(1)]*

1.8 Other expressions used in this Bill that are defined in the Credit Bill and the Transitional Bill have the same meanings as they have in those Bills. *[Subsection 4(2)]*

Imposition of, and matters relating to amount of, fees

1.9 Fees for chargeable matters may be prescribed in the regulations *[subsection 5(1)]*. Any fees prescribed will be imposed as a tax to ensure compliance with constitutional requirements *[subsection 5(2)]*.

1.10 Two or more fees may be prescribed for the same chargeable matter. *[Subsection 5(3)]*

1.11 Fees for chargeable matters may be prescribed in the regulations by specifying an amount as the fee (not exceeding \$10,000) or by specifying a method of calculating the amount of the fee. The \$10,000 maximum applies separately to each fee imposed if more than one fee is prescribed for the same chargeable matter. *[Subsection 6(1)]*

1.12 A fee for a chargeable matter need not bear any relationship to the cost of providing any service that forms part of, or is related to, that matter. *[Subsection 6(2)]*

1.13 A fee, or the sum of fees, for a chargeable matter must not exceed \$50,000. *[Subsection 6(3)]*

Different fees in relation to chargeable matter

1.14 Regulations may prescribe that fees can be charged at different rates depending whether or not a chargeable matter is complied with by electronic means. *[Section 7]*

Example 1.2

The fee for lodging an annual compliance certificate (as required by section 53 of the Credit Bill) electronically may be lower in comparison to the fee imposed for lodging the same document in paper form.

1.15 Regulations may also prescribe that fees can be charged at different rates depending on the number of representatives that the person who is liable for the fee has at a particular time. [Section 8]

Example 1.3

This allows for the amount of a fee that is to be imposed on a licensee to be calculated based on the number of credit representatives they authorise under sections 64 and 65 of the Credit Bill.

Who is liable to pay the fee for a chargeable matter, and time liability is incurred?

1.16 The person who is liable to pay the fee imposed for each chargeable matter, and the time at which the liability arises, is described in Table 1.1. [Section 9]

Table 1.1

<i>Chargeable matter (subsection 4(1))</i>	<i>Who is liable</i>	<i>Time liability arises</i>
lodgment of a document	person who lodges the document	when the document is lodged
inclusion of a document in the register	person who requests inclusion of the document in the register or if no request, the person who lodges the document	when the request for inclusion of the document in the register or if no request, when the document is lodged
inspection or search of a register or document kept by ASIC	person who requests the information	when the request is made
information made available by ASIC	person who requests the information	when the request is made
production of register or document by ASIC under a subpoena	person who filed the subpoena	when the subpoena is served on ASIC
issuing a document or copy, granting a licence, consent or approval, or doing any other act by the Minister or ASIC	person requesting issue of the document or copy, the grant of the licence, consent or approval, or any other act. If there is no request, the person for whose benefit the act is done	when the request is made, or if there is no request, when the act is done

<i>Chargeable matter (subsection 4(1))</i>	<i>Who is liable</i>	<i>Time liability arises</i>
making an inquiry of, or application to, ASIC or the Minister	person who makes the inquiry or application	when the inquiry or application is made
submitting a document to ASIC for examination	person submitting the document	when the document is submitted

Regulations

The Fees Bill provides that the Governor-General may make regulations for the purposes of sections 5 to 8. *[Section 10]*

