

EXPLANATORY STATEMENT

Select Legislative Instrument No. 4, 2015

Issued by authority of the Assistant Treasurer

Corporations (Fees) Act 2001

Corporations (Fees) Amendment (Register of Relevant Providers) Regulation 2015

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 6A of the Act.

Section 6 of the Act provides that the regulations may prescribe a fee for a chargeable matter by specifying an amount as the fee or by specifying a method for calculating the amount of the fee.

Section 5 of the Act provides that two or more fees may be prescribed for the same chargeable matter.

Section 5A of the Act provides that the regulations may prescribe, in relation to a chargeable matter, different fees having regard to whether the matter is complied with by electronic means.

The *Corporations (Fees) Amendment (Register of Relevant Providers) Regulation 2015* (the Regulation) makes a number of amendments to the *Corporations (Fees) Regulations 2001* (the Principal Regulations) to allow fees to be charged for the Register of Relevant Providers.

The purpose of the Regulation is to allow the Australian Securities and Investments Commission (ASIC) to charge Australian Financial Services Licensees (licensees) a fee when providing information to be included on the Register of Relevant Providers.

There is significant overlap between the population of relevant providers (as defined by the *Corporations Amendment (Register of Relevant Providers) Regulation 2015*) and authorised representatives (as defined in Chapter 7 of the *Corporations Act 2001*). The Regulation seeks to harmonise the fees between the Register of Relevant Providers and the Authorised Representatives Register so that licensees can lodge the information on a single form and only be charged a single fee when providing information about the same person to ASIC.

The Regulation also incorporates the following proposals:

- An increase in the fees charged for lodging information in relation to the Authorised Representatives Register and to prescribe fees for lodgement of information in relation to the Register of Relevant Providers.
- A change in method for calculating the fee amounts for lodging information in relation to the Authorised Representatives Register from a per form basis to a per authorised representative basis. This method relates to information lodged to add an authorised representative, informing ASIC of any change in details of an authorised representative

and fees for late lodgement of this information. This method will be consistent with the method used for the Register of Relevant Providers.

- Harmonisation of fees between the Authorised Representatives Register and the Register of Relevant Providers. The same fees will be charged for lodging information on both registers and, following a transition period, only one fee will be charged when lodging information on both registers on a single form about a single person.

The establishment of a public register of financial advisers was a recommendation of the 2014 Senate Economic References Committee Report into the performance of ASIC.¹

The Government accepted this recommendation, and in July 2014, the then Acting Assistant Treasurer, Senator the Hon Mathias Cormann, established an industry Working Group (the Working Group) to advise the Government on a number of issues concerning the register, including: its scope and content; whether reporting obligations should be placed on licensees and/or financial advisers; and potential privacy issues.

The Government is implementing this register through the *Corporations Amendment (Register of Relevant Providers) Regulation 2015*.

Details of the Regulation are set out in the [Attachment](#).

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised. Under the *Corporations Agreement 2002*, the Commonwealth must consult with the Legislative and Governance Forum for Corporations before making amendments to certain provisions of the Principal Regulations. The Council has been consulted.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 of the Regulation commences on 3 March 2015. All material in the Regulation not in Schedule 1 commences the day after the Regulation is registered.

The Government undertook a public consultation process on the Regulations to implement the Register of Relevant Providers between 27 November 2014 and 17 December 2014. Although an exposure draft of the Regulation was not provided during this consultation (an exposure draft of the *Corporations Amendment (Register of Relevant Providers) Regulation 2015* was made available), the issue of how fees would be charged was consulted on. The issue of how fees would be levied was outlined in a consultation note and the matter was discussed in two stakeholder roundtables that were held in December 2014.

¹ The Report is available at:
http://www.apf.gov.au/parliamentary_business/committees/senate/economics/asic

Details of the Corporations (Fees) Amendment (Register of Relevant Providers) Regulation 2015

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *Corporations (Fees) Amendment (Register of Relevant Providers) Regulation 2015* (the Regulation).

Section 2 – Commencement

Schedule 1 of the Regulation commences on 3 March 2015. All material in the Regulation not in Schedule 1 commences the day after the Regulation is registered.

Section 3 – Authority

The Regulation is made under the *Corporations (Fees) Act 2001* (the Act).

Section 4 – Schedule(s)

This section provides that the schedule amends the *Corporations (Fees) Regulations 2001* (the Principal Regulations).

The Regulation consists of 1 Schedule, which amends the Principal Regulations.

Schedule 1 – Amendments

Item 1

Item 1 inserts a heading ‘Part 1 – Preliminary’, before section 1 of the Principal Regulations.

Item 2

Item 2 amends the list of definitions to include that, for the purposes of the Principal Regulations, a reference to the Corporations Regulations means the *Corporations Regulations 2001*.

Item 3

Item 3 inserts a heading ‘Part 2 – Prescribed fees’, after regulation 2 of the Principal Regulations.

Item 4

Item 4 amends the note under subregulation 3(1) of the Principal Regulations. It seeks to include references to regulations 9A and 9B. This has the effect of outlining that fees for chargeable matters are also outlined in regulations 9A and 9B.

Item 5

Item 5 inserts a number of regulations after regulation 9 in the Principal Regulations.

These additional regulations are outlined in further detail below:

Regulation 9A Notices about authorised representatives and relevant providers – prescribed fees

Subregulation 9A(1) – Prescribed fees

This subregulation prescribes the fee in subregulation 9A(2) for lodging notices under subsections 916F(1) or (3) of the Corporations Act and subsections 922D(1) or 922H(1) of the Corporations Act, as notionally inserted by Schedule 8D to the Corporations Regulations.

Subregulation 9A(2) – Fees

This subregulation specifies the fee that applies for lodging information for the purposes of the Authorised Representatives Register and the Register of Relevant Providers.

The fee is equal to the prescribed amount (defined in subregulation 9A(5)) multiplied by the relevant number of persons to which the notice relates (defined in subregulation 9A(5)).

Subregulation 9A(3) – Where no fee is payable

This subregulation specifies the following instances where no fee is prescribed:

- a notice is lodged under subsections 922J(1) or 922K(1) of the Corporations Act (as notionally inserted by Schedule 8D of the Corporations Regulations). That is, the notice is about a person beginning or ceasing to control a body corporate licensee; or
- a notice is lodged about the authorisation of a relevant provider or authorised representative by a licensee within 10 days of receiving their Australian Financial Services licence.

Subregulation 9A(4) – Indexation

Subregulation 9A(5) specifies that the prescribed fees in this regulation are indexed by the Consumer Price Index.

Subregulation 9A(5) – Definitions

This subregulation defines the term prescribed amount for the purposes of the formula in subregulation 9A(2). It specifies that, if a notice is lodged electronically notifying ASIC that an individual has become an authorised representative or a relevant provider (subsections 916F(1) and 922D(1) of the Corporations Act), the prescribed fee for the purposes of the formula in subregulation 9A(2) is \$43. If the notice is lodged in any other form, the fee is \$79.

For a notice lodged electronically notifying ASIC of a change in the details of an authorised representative or relevant provider (subsections 916F(3) and 922H), the prescribed fee for the purposes of the formula in subregulation 9A(2) is \$29. If the notice is lodged in any other form, the fee is \$50.

These figures represent a \$5 increase to the indexed fee amounts relating to the Authorised Representatives Register outlined in Items 1B and 1C of Schedule 1 of the Fees Regulations.

Subregulation 9A(5) defines the relevant number of persons to which a notice relates for the purposes of the formula in 9A(2).

If a notice relates only to authorised representatives, the relevant number of persons is the number of authorised representatives on the form.

If a notice relates only to relevant providers, the relevant number of persons is the number of relevant providers on the form.

If a notice relates to both authorised representatives and relevant providers, the relevant number of persons is the number of persons on the form. That is, a person is not to be counted as both an authorised representative and a relevant provider for the purposes of the formula in subregulation 9A(2).

For example, consider the case where a particular notice relates to five individuals, four of whom are relevant providers and three of whom are authorised representatives (that is, two of the people in question are both authorised representatives and relevant providers). In this example, the fee would be equal to the prescribed amount multiplied by five.

Regulation 9B – Late fees for notices about authorised representatives and relevant providers

Subregulation 9B(1) – Prescribed fee

This subregulation specifies that for the purposes of section 5 of the Act, the fees in subregulation 9B(2) are prescribed fees if a notice is lodged with ASIC under any one or more of the following: subsections 916F(1) or (3) of the Corporations Act or subsections 922D(1), 922H(1), 922(J) or 922K(1) of the Corporations Act, as notionally inserted by Schedule 8D to the Corporations Regulations, and the notice is not lodged in accordance with subsection 916F(1) or (3) or 922(L) of the Corporations Act.

That is, the late fees in subregulation 9B(2) are prescribed fees.

9B(2) – Late fees formula

Subregulation 9B(2) specifies how late fees are calculated in relation to the Authorised Representatives Register and the Register of Relevant Providers. There are two types of late fees, one that applies when a notice is lodged within one month of the required lodgement date (the lower amount, equal to \$74) and one that applies when a notice is lodged more than one month after the notice is due (the higher amount, equal to \$308).

If a person becomes an authorised representative, licensees are required to lodge this information within 15 business days (subsection 916F(1) of the Corporations Act). If a person becomes a relevant provider, licensees are required to lodge this information within 30 business days (subsection 922L(2) of the Corporations Act).

In relation to changes occurring to the details of an authorised representative, this information is required to be lodged within 10 business days of the event occurring (subsection 916F(3) of the Corporations Act). In relation to changes occurring to the details of a relevant provider, this information is required to be lodged within 30 business days of the event occurring (subsection 922L(2) of the Corporations Act).

The amount of the late fee chargeable depends on the number of relevant providers and authorised representatives to which the notice relates and how late the notice is lodged. These terms are defined in subregulation 9B(5).

The late fee is then equal to the relevant number for the lower amount multiplied by the lower amount plus the relevant number for the higher amount multiplied by the higher amount.

For example, consider the case where a notice relates to ten relevant providers, two of whom are lodging within one month of the required lodgement date and three of whom are lodging more than one month after the required reporting date. In this instance, the relevant number for the lower amount would be two and the relevant number for the higher amount would be three. Thus, the late fee payable would be equal to $(3 \times \text{higher amount}) + (2 \times \text{lower amount})$.

Subregulation 9B(3) - Indexation

Subregulation 9B(3) specifies that higher and lower amounts are indexed in accordance with subregulations 3(3) to (7).

Subregulation 9B(4) – Application of Item 28 of Schedule 1

Subregulation 9B(4) indicates that the late fees specified in Item 28 of Schedule 1 of the Fees Regulations do not apply in relation to lodgements concerning the Authorised Representatives Register and the Register of Relevant Providers.

Subregulation 9B(5) – Definitions

Subregulation 9B(5) defines a number of terms used in the earlier subregulations of regulation 9.

‘Higher amount’ is equal to \$308. This is the late fee charged per person when a notice is lodged more than one month after the notice is due.

‘Lower amount’ is equal to \$74. This is the late fee charged per person when a notice is lodged within one month of the required lodgement date.

These amounts equate to the indexed fees currently outlined in Item 28 of Schedule 1 of the Fees Regulations.

The relevant number for the higher amount captures the number of persons in a notice in relation to whom the notice was lodged one month or more after the time required under subsection 916F(1) or (3) or subsection 922L(2) of the Corporations Act.

The relevant number for the lower amount captures the number of persons in a notice in relation to whom the notice was lodged less than one month after the time required under subsection 916F(1) or (3) or subsection 922L(2) of the Corporations Act.

The notification periods are shorter for authorised representatives than for relevant providers — licensees have 15 business days to notify ASIC about a new authorised representative, 10 business days to notify ASIC about a change in the details of an authorised representative and 30 business days to notify ASIC about a new or a change in the details of a relevant provider. As such, it would be possible for a person to lodge more than one month late as an authorised representative and less than one month late as a relevant provider.

Paragraph (c) in the definition of the relevant number for the higher amount and the relevant number for the lower amount is intended to clarify that, for the purposes of calculating the relevant number for the higher and lower amounts, when a notice is late for the purposes of both the authorised representatives register and the register of relevant providers, the person is only counted as an authorised representative.

Thus, a person will only ever be counted once for the purposes of a late fee — they will not be counted twice for the purposes of the relevant number for the higher amount or the relevant number for the lower amount. A person will also not be counted both for the purposes of the relevant number for the higher amount and the relevant number of the lower amount in a single notice.

It should also be noted that if a person is both an authorised representative and a relevant provider, this provision does not alter the number of business days which they have to report information. Thus, a licensee will have 10 business days to notify ASIC about a change in information on the Authorised Representatives Register and 30 business days to report changes to the Register of Relevant Providers. For the purposes of calculating late fees, where there is an overlap between the two registers, (for example, the person changes their name) the Authorised Representatives reporting obligations apply.

For example, a person becomes a relevant provider and an authorised representative on 1 January 2016 and their licensee notifies ASIC on 1 March 2016. The person would be more than one month late for the purposes of subsection 916F(1) but less than month late for the purposes of subsection 922L(2). In this case, the person in question would be counted once for the purposes of calculating the relevant number for the higher amount.

Part 3 – Transitional matters

Item 6

Item 6 removes the heading ‘Transitional matters’ which is immediately prior to regulation 10.

Item 7

Item 7 has the effect of removing subregulation (1) from regulation 10. The text of this subsection shall still operate under regulation 10.

Item 8

Item 8 inserts a new Division 2 into the Principal Regulations after regulation 10. This Division provides for transitional arrangements relating to the establishment of the Register of Relevant Providers.

Regulation 11 – No fees in relation to certain notices lodged under the Corporations Act before 1 October 2015.

Subregulations 11(1) and 11(2) specify that no fee is charged for notices relating to changes in the details of an authorised representative (required under subsection 916F(3)) or relevant provider (required under subsection 922H(1)) from 3 March to 30 September 2015. This includes no late fees relating to these notices.

The lodgement of information on professional association memberships, qualifications and training between 23 May 2015 and 30 May 2015, as required by regulation 10.20.07 of the Corporations Regulations also attracts no fee. These lodgements also attract no late fees.

During the transitional period, fees will continue to apply for all lodgements under subsections 916F(1) and 922D(1), which relate to adding an authorised representative and/or relevant provider.

Regulation 12 – Two fees chargeable during transition period

Regulation 12 specifies that between 3 March and 30 September 2015, licensees will be charged two fees for notifying ASIC about authorising an individual who is both a relevant provider and an authorised representative.

For example, if a licensee notifies ASIC that it is authorising an individual to be both an authorised representative and a relevant provider on 16 May 2015, two fees would be charged. From 1 October, only a single fee will apply for an equivalent notification.

During the transition period, fees are only charged for notices lodged under subsections 916F(1) and 922D(1), no fee is charged for all other notices.

Item 9

Item 9 repeals items 1B and 1C from the table in Schedule 1 of the Fees Regulations.

Item 10

Item 10 specifies that the fee for inspecting, or an inquiry involving the inspection or search (other than a search of information prescribed, on a prescribed register) is \$12.

\$12 is the indexed amount of \$9 currently displayed in the Fees Regulations.

No fee applies if the search is by or on behalf of the Australian Broadcasting Service, the Special Broadcasting Service, the Australian Bureau of Statistics, the holder of a licence for a commercial broadcasting or television station or the proprietor or publisher of a newspaper generally available to the public otherwise than by subscription.

Statement of Compatibility with Human Rights

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

Corporations (Fees) Amendment (Register of Relevant Providers) Regulation 2015

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 (Fees) Amendment (Register of Relevant Providers) Regulation 2015* (the Regulation) enables fees to be collected when Australian Financial Services licensees lodge information for the purposes of populating the Register of Relevant Providers.

The Regulation also harmonises the fees between the Register of Relevant Providers and the Authorised Representatives Register, including the amount charged and the method for calculating the fee. There is a significant overlap between the populations of the Register of Relevant Providers and the Authorised Representatives Register. Following a transitional period, the harmonisation of fees will enable a single fee to be charged when information about a person is lodged in a single form in relation to both registers.

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.