

EXPLANATORY STATEMENT

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy

Business Names Registration (Fees) Act 2011

Business Names Registration (Fees) Regulations 2022

The *Business Names Registration (Fees) Act 2011* (the Act) imposes, as taxes, fees for things done under the *Business Names Registration Act 2011* which largely relate to the registration of business names and applications for information on the business name register.

Section 7 of the Act 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.

Section 50 of the *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are repealed on the first 1 April or 1 October falling on or after the tenth anniversary of registration of the instrument in a process known as sunset. The *Business Names Registration (Fees) Regulations 2011* (2011 Regulations) are due to sunset and be automatically repealed on 1 April 2022. Legislative instruments generally cease to have effect after a specific date unless further action is taken to extend their operation, such as remaking the instrument. The *Business Names Registration (Fees) Regulations 2022* (the Regulations) would remake the 2011 Regulations without any substantive changes.

The Regulations prescribe the fees for chargeable matters under the Act. The Regulations support the imposition of fees for the registration and renewal of business name registrations consistent with the Intergovernmental Agreement for Business Names, entered into between the Commonwealth and the States and Territories, which provides that such fees should be commensurate with the total costs involved in setting up and administering the national business names registration system.

The Regulations prescribe fees for chargeable matters under the Act for the part of the financial year beginning 1 July 2021 after the Regulations commence and the continued operation of the indexation method applied to index the fees for subsequent years.

Public consultation was undertaken on the draft Regulations which continue to apply the existing fees and indexation method without changes. Additionally, targeted consultation was undertaken with the Australian Securities and Investments Commission. No changes arose from the consultations. Minor drafting amendments were made for consistency with current drafting conventions, but these changes do not affect the fees applied or the indexation method.

Details of the Regulations are set out in Attachment A.

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

The Regulations commenced on 1 April 2022.

Prior to the making of the Regulations and in accordance with the Office of Best Practice Regulation's Guidance Note on sunseting instruments, the Department of the Treasury self-assessed that the 2011 Regulations were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required (OBPR reference ID number OBPR22-01600). This assessment was informed by the public consultation on the exposure draft Regulations.

A statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Business Names Registration (Fees) Regulations 2022*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Regulations is the *Business Names Registration (Fees) Regulations 2022* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commenced on 1 April 2022.

Section 3 – Authority

The Regulations are made under the *Business Names Registration (Fees) Act 2011* (the Act).

Section 4 – Schedules

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

Section 5 – Definitions

This section defines terms that are used in the Regulations.

Part 2 – Fees for chargeable matters

Section 6 – Prescribed Fees

This section prescribes the fees that are imposed for chargeable matters for the purposes of section 4 of the Act. A chargeable matter is broadly where a fee applies for making an application for registration of a business name or an application for an extract from the register.

This section also provides that the fees are to be indexed annually in line with the All Groups Consumer Price Index (weighted average of the eight capital cities) as published by the Australian Statistician. Under the indexation method annual indexation is calculated by multiplying the fee to be indexed by the Consumer Price Index number for the March quarter immediately preceding the financial year for which indexation is being applied and dividing the result by the Consumer Price Index number for the March quarter that is two financial years before the financial year for which indexation is being applied.

Part 3 – Transitional and application provisions

Section 7 – Saving provision: amounts payable before commencement

This section provides transitional arrangements that provide that the 2011 Regulations continue to apply in relation to amounts that were payable before the commencement of the Regulations, as if the repeal had not happened.

Schedule 1 – Repeals

Business Names Registration (Fees) Regulations 2011 Items 1 repeals the *Business Names Registration (Fees) Regulations 2011*.

Statement of Compatibility with Human Rights

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

Business Names Registration (Fees) Regulations 2022

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 *Business Names Registration (Fees) Regulations 2022* prescribe fees for chargeable matters under the *Business Names Registration (Fees) Act 2021* for the financial year beginning 1 July 2021 and the indexation mechanism for subsequent years.

These Regulations continue to impose the existing fees and indexation method without material changes after the sunseting of the *Business Names Registration (Fees) Regulations 2011* on 1 April 2022.

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.