

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

*Superannuation Auditor Registration Imposition Act 2012*

*Superannuation Auditor Registration Imposition Regulations 2022*

The *Superannuation Auditor Registration Imposition Act 2012* (the Act) imposes fees on certain matters to recover the costs of establishing the self-managed superannuation fund auditor registration regime.

Section 5 of the Act provides that the Governor-General may make regulations for the purposes of prescribing fees payable in accordance with section 128L of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Section 128L of the SIS Act sets out the fees payable for the self-managed superannuation fund auditor registration regime, detailing the kind of matter the fee is payable for and the person who is liable to pay that fee. The regulations specifies when fees must be paid and the amount that must be paid.

Subsection 4(1) of the Act provides that the amounts of those fees are prescribed by the regulations. Subsection 4(2) provides that the regulations may prescribe such a fee by prescribing an amount (not exceeding \$3,000) as the fee or by prescribing a method for calculating the amount (not exceeding \$3,000) of the fee. Subsection 4(3) provides that the regulations may prescribe different amounts for different kinds of matters for which fees are payable.

The purpose of the *Superannuation Auditor Registration Imposition Regulations 2022* (the Regulations) is to remake and improve the operation of the *Superannuation Auditor Registration Imposition Regulation 2012* (2012 Regulations) before they 'sunset'. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. The 2012 Regulations will be automatically repealed on 1 April 2023. Legislative instruments generally cease to have effect after ten years unless further action is taken to extend their operation, such as remaking the instrument.

The Regulations remake and improve the 2012 Regulations by updating the amounts of the fees to ensure they reflect the costs associated with providing the prescribed regulatory activities, and by updating the language about the method of indexation for ease of understanding. These changes do not affect the substantive meaning or operation of the provisions. The Regulations broadly follow the structure and numbering of the 2012 Regulations.

The exposure draft of the Regulations and explanatory material were released for a four-week public consultation between 13 October 2022 and 10 November 2022. Four submissions were received with support for the majority of the fee changes, however, some stakeholders expressed concerns with certain fee amounts. No changes were made to the Regulations as the proposed fees were set in accordance with Australian Government Charging Framework and Cost Recovery Guidelines.

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

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 commence on the day after registration.

The Regulations have been assessed as having no more than a minor regulatory impact (OBPR22-03313). Accordingly, no Regulatory Impact Statement has been prepared.

A Statement of Compatibility with Human Rights is at Attachment C.

**Details of the *Superannuation Auditor Registration Imposition Regulations 2022***

This attachment sets out further details of the *Superannuation Auditor Registration Imposition Regulations 2022* (the Regulations). All references are to the Regulations unless otherwise stated.

Section 128L of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) sets out the fees payable for the self-managed superannuation fund auditor registration regime, detailing the matters the fee is payable for and the person who is liable to pay that fee. The Regulations specify the amount that must be paid for those matters mentioned in section 128L of the SIS Act.

The Regulations remake and improve the *Superannuation Auditor Registration Imposition Regulation 2012* (2012 Regulations) by updating the amounts of the fees and updating the language about the method of indexation for ease of understanding.

The finding table in [Attachment B](#) represents the previous numbering of the 2012 Regulations and the updated numbering in the Regulations.

**Part 1 – Preliminary**

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Superannuation Auditor Registration Imposition Regulations 2022*.

**Section 2 – Commencement**

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

The Regulations are made under the *Superannuation Auditor Registration Imposition Act* (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**

Section 5 sets out the definition of key terms used in the Regulations.

The definition of ‘indexable matter’ has been removed as the term is no longer used within the Regulations. See item 8 for further detail.

## **Part 2 – Prescribed fees**

### **Section 6 – ASIC fees**

This section prescribes fee amounts for the matters for which fees are due and payable for under items 1 to 7 of section 128L of the Act. Those matters are in relation to regulatory services required for the self-managed superannuation fund auditor registration regime.

The fee amounts in the table have been updated to reflect the costs the Australian Securities and Investments Commission (ASIC) incurs. This ensures that the fees payable are reflective of the costs which ASIC incurs for each relevant activity, which is in line with the objectives of the Australian Government Charging Framework and Cost Recovery Guidelines.

Fee amounts are outlined in the following table:

<b>ASIC fees</b>		
<b>Item</b>	<b>Column 1 Fee payable for ...</b>	<b>Column 2 Fee</b>
1	applying for registration as an approved SMSF auditor	\$2,191
2	applying for conditions imposed on registration as an approved SMSF auditor to be varied or revoked under section 128D of the SIS Act	\$678
3	applying for registration as an approved SMSF auditor to be cancelled under section 128E of the SIS Act	\$193
4	undertaking a competency examination in accordance with section 128C of the SIS Act	\$107
5	giving to the Regulator a statement under section 128G of the SIS Act	nil
6	giving to the Regulator a statement under section 128G of the SIS Act within 1 month after it fell due (in addition to the fee payable because of item 5)	nil
7	giving to the Regulator a statement under section 128G of the SIS Act more than 1 month after it fell due (in addition to the fee payable because of item 5)	nil
8	giving to the Regulator particulars under section 128H of the SIS Act within 1 month after they fell due	nil
9	giving to the Regulator particulars under section 128H of the SIS Act more than 1 month after they fell due	nil

### **Section 7 – Registry fees**

Section 7 prescribes fee amounts for the matters for which fees are due and payable under item 8 of the table in subsection 128L(1) of the SIS Act. Registry fees relate to registry services where ASIC updates its registry database and are subject to indexation.

The fees prescribed for items 2 and 4 of the table in section 7 of the Regulations have been updated according to the methodology set out in section 8 of the Regulations in order to reflect increases in the consumer price index.

Fee amounts are outlined in the following table:

<b>Registry fees</b>		
<b>Item</b>	<b>Column 1 Fee payable for ...</b>	<b>Column 2 Fee</b>
1	inspecting or searching a register that the Regulator keeps under Division 1A of Part 16 of the SIS Act for a current extract	nil
2	inspecting or searching a register that the Regulator keeps under Division 1A of Part 16 of the SIS Act for a historical extract, except if the request to inspect or search is made by a journalist	\$20
3	inspecting or searching a register that the Regulator keeps under Division 1A of Part 16 of the SIS Act for a historical extract, if the request to inspect or search is made by a journalist	nil
4	inspecting or searching an extract given to or issued by the Regulator under Division 1A of Part 16 of the SIS Act (other than an order made under subsection 130F(2) of that Act), except if the request to inspect or search is made by a journalist	\$20
5	inspecting or searching an extract given to or issued by the Regulator under Division 1A of Part 16 of the SIS Act (other than an order made under subsection 130F(2) of that Act), if the request to inspect or search is made by a journalist	nil

### Section 8 – Method for calculating registry fees in subsequent financial years

Section 8 prescribes the method for calculating registry fees in the financial years subsequent to the financial year starting on 1 July 2023. Registry fees are set out in Section 7 of the Regulations.

The structure of this section has been simplified through the removal of the concept of an ‘indexable matter.’ The 2012 Regulations prescribed the indexation methodology by defining which fee items were considered ‘indexable.’ For ease of understanding, amendments to this section have removed the concept of ‘indexable matter’ and instead specify that only the fees set out within section 7 (that is, the registry fees) are subject to indexation.

As under the 2012 Regulations, ASIC fees are not subject to indexation, as they are set on a cost recovery basis and will be periodically reviewed by ASIC.

Subsection 8(3) has been included ensure a cap the indexation to align with the \$3,000 cap on the amount that can be prescribed on a fee.

These change how the method of indexation is expressed have not altered the scope or substantive operation of the provision.

### Schedule 1 – Repeals

This section repeals the whole of the *Superannuation Auditor Registration Imposition Regulation 2012*.

## **ATTACHMENT B**

### **FINDING TABLES – *Superannuation Auditor Registration Imposition Regulations 2022***

As a result of some of the changes outlined in Attachment A, it was necessary to renumber the provisions in the Regulations. This explanatory statement includes finding tables to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated.

In the finding table, in the 'Old Law' column, 'no equivalent' means that this is a new provision that has no equivalent in the old law.

<i>Old Law</i>	<i>New Law</i>
<i>Superannuation Auditor Registration Imposition Regulation 2012</i>	<i>Superannuation Auditor Registration Imposition Regulations 2022</i>
1	1
No equivalent	2 to 4
3	5
4	6
4A	7
5	8

## **Statement of Compatibility with Human Rights**

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

### **Superannuation Auditor Registration Imposition Regulations 2022**

The Regulations are 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 purpose of the *Superannuation Auditor Registration Imposition Regulations 2022* (the Regulations) is to remake and improve the operation of the *Superannuation Auditor Registration Imposition Regulation 2012* (2012 Regulations) before they ‘sunset’. The Regulations remake and improve the 2012 Regulations by updating the amounts of the fees and updating the language about the method of indexation for ease of understanding. These changes do not affect the substantive meaning or operation of the provisions. The Regulations broadly follow the structure and numbering of the 2012 Regulations.

### **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.