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CORPORATIONS (FEES) AMENDMENT (ASIC FEES) BILL 2018

NATIONAL CONSUMER CREDIT PROTECTION (FEES) AMENDMENT (ASIC  
FEES) BILL 2018

SUPERANNUATION AUDITOR REGISTRATION IMPOSITION AMENDMENT  
(ASIC FEES) BILL 2018

SUPERANNUATION INDUSTRY (SUPERVISION) AMENDMENT (ASIC FEES)  
BILL 2018

EXPOSURE DRAFT EXPLANATORY MATERIALS

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*[Click here and insert the name of the Bill]*

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# Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investments Commission
ASIC Fees Bill	Corporations (Fees) Amendment (ASIC Fees) Bill 2018
ASIC Superannuation Auditor Registration Bill	Superannuation Auditor Registration Imposition Amendment (ASIC Fees) Bill 2018
Credit ASIC Fees Bill	National Consumer Credit Protection (Fees) Amendment (ASIC Fees) Bill 2018
Credit Fees Act	<i>National Consumer Credit Protection (Fees) Act 2009</i>
Credit Fees Regulations	<i>National Consumer Credit Protection (Fees) Regulation 2010</i>
Fees Act	<i>Corporations (Fees) Act 2001</i>
Fees Regulations	<i>Corporations (Fees) Regulations 2001</i>
FSI	<i>Financial System Inquiry</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SIS ASIC Fees Bill	<i>Superannuation Industry (Supervision) Amendment (ASIC Fees) Bill 2018</i>
SMSF	Self-managed Superannuation fund



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# **Chapter 1**

## **ASIC Fees**

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### **Outline of chapter**

1.1 This chapter explains the amendments in the ASIC Fees Bill, the Credit ASIC Fees Bill, the ASIC Superannuation Auditor Imposition Bill and the SIS ASIC Fees Bill to allow ASIC to better align its fees, by enabling ASIC to charge a cost reflective fee for the services it provides for a specific entity.

### **Context of amendments**

1.2 On 20 April 2016, the Government accepted recommendation 29 of the Financial System Inquiry to introduce an industry funding model for ASIC.

1.3 The industry funding model's introduction will have significant benefits, including: improving equity, as only those entities that are regulated by ASIC and create the need for regulation will bear its costs, rather than ordinary taxpayers; encouraging regulatory compliance as good conduct will reduce supervisory levies; improving ASIC's resource allocation, by providing ASIC with richer data to better identify emerging risks' and enhancing ASIC transparency and accountability.

1.4 On 1 July 2017, the first phase of the ASIC industry funding model commenced with the introduction of industry levies to recover the costs of ASIC's regulatory activities.

1.5 The Government has committed that ASIC's costs for specific regulatory activities requested by an entity should be fully recovered from that entity. This is referred to as 'fees-for-service' and is the second and final phase of the ASIC industry funding model.

1.6 The current fees charged for the services and activities ASIC provides is not a true reflection of the actual costs incurred by ASIC. Historically, these services and activities have only attracted a nominal fee. As a result, any difference between the fee an entity pays and the actual costs incurred by ASIC is subsidised by taxpayers.

1.7 ASIC's regulatory services primarily benefit the requesting entities, and as such the fees associated with the regulatory services will be cost recovered. The regulatory activities ASIC provides will no longer be taxpayer funded.

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1.8 Fees will be paid by entities for ASIC’s demand-driven services, such as processing a licence or registration application, provided that the fee directly represents the efficient costs of providing the regulatory activity or service.

1.9 The fees attached to ASIC forms relating to updating an ASIC registry database are not in scope for industry funding and will not be recovered under this model. The fees for lodging these forms will continue to be set separately.

1.10 Specific fee-for-service activities and sectors affected by these amendments are:

<i>Activity</i>	<i>Affected subsectors</i>
Document compliance reviews (such as prospectuses, compliance documents)	Companies (all sub-sectors) Australian Financial Services (AFS) Licencees (all sub-sectors)
Licence applications or variations	Australian Credit Licencees (all sub-sectors) AFS Licencees (all sub-sectors) Market infrastructure providers (all sub-sectors)
Applications for registration	AFS Licencees – Managed investment schemes Liquidators (all sub-sectors)
Requests for changes to market integrity rules or procedures	Market infrastructure providers (all sub-sectors)
Applications for relief	All sectors and sub-sectors

1.11 These fee-for-service activities amounts will be reviewed every three years and will involve a public consultation process utilising a cost recovery implementation statement.

## **Summary of new law**

1.12 Schedule 1 to the ASIC Fees Bill:

- increases the caps to allow ASIC to recover the costs ASIC incurs when providing regulatory services;



- provides that the Regulations may prescribe for a particular chargeable matter, whether the fee is for low, medium or high complexity;
  - provides that the Regulations may prescribe for a particular chargeable matter, different fees based on the type of entity; and
  - provides that ASIC can determine by legislative instrument whether a type of application for a particular regulatory service is low, medium or high complexity.
- 1.13 Schedule 1 to the Credit Fees Bill:
- provides that the Regulations may prescribe for a particular chargeable matter, different fees based on the type of entity.
- 1.14 Schedule 1 to the ASIC Superannuation Auditor Registration Bill:
- increases the cap to allow ASIC to recover more closely the costs ASIC incurs when providing regulatory services in relation to SMSF auditors.
- 1.15 Schedule 1 to the SIS ASIC Fees Bill:
- provides ASIC can charge additional fees in relation to an application to vary or revoke the conditions or cancel the registration of an approved SMSF auditor.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Corporations (Fees) Act 2001</i>	
Regulations may prescribe a fee for a chargeable matter by specifying an amount; however the specified amount may not exceed \$200,000.	Regulations may prescribe a fee for a chargeable matter by specifying an amount; however the specified amount may not exceed \$10,000.
The fee or sum of fees for a chargeable matter may not exceed \$300,000, except for services in relation to a market licensee and a particular or potential conflict. The total fee may in relation to a market licensee and a particular or potential conflict may not exceed \$300,000 in a 12 month period.	The fee or sum of fees for a chargeable matter may not exceed \$50,000, except for services in relation to a market licensee and a particular or potential conflict. The total fee in relation to a market licensee and a particular or potential conflict may not exceed \$100,000 in a 12 month period.

The Regulations may prescribe for a particular chargeable matter, whether the fee is for low, medium or high complexity. The Regulations may prescribe for a chargeable matter a different fee for different entity types.	No equivalent
ASIC may by legislative instrument determine whether a type of application for a particular regulatory service that is to be charged is considered low, medium or high complexity.	No equivalent
<i>National Consumer Credit Protection (Fees) Act 2009</i>	
The Regulations may prescribe for a chargeable matter a different fee for the different entity types.	No equivalent
<i>Superannuation Auditor Registration Imposition Act 2012</i>	
Regulations may prescribe a fee by specifying an amount; however the specified amount may not exceed \$5,000.	Regulations may prescribe a fee by specifying an amount; however the specified amount may not exceed \$1,000.
<i>Superannuation Industry Supervision Act 1993</i>	
In addition to the current law, ASIC may recover costs in relation to an application to vary or revoke the conditions or cancel the registration of an approved SMSF auditor.	ASIC may recover costs in relation to an application for registration to be an approved SMSF auditor.

## Detailed explanation of new law

1.16 The ASIC Fees Bill and the ASIC Superannuation Auditor Registration Bill amend the Fees Act and the *Superannuation Auditor Registration Imposition Act 2012* to allow the caps to increase to allow ASIC to better align its fees to allow cost recovery of the costs ASIC incurs when providing regulatory services to a particular entity.

1.17 The ASIC Fees Bill and the Credit ASIC Fees Bill amend the Fees Act and the Credit Fees Act to allow that the Regulations may prescribe for a chargeable matter, a different fee for the different entity types. The ASIC Fees Bill also amends the Fees Act to provide that the

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Regulations may prescribe for a chargeable matter, whether the fee is for low, medium or high complexity.

1.18 The ASIC Fees Bill amends the Fees Act to enable a legislative instrument power to allow ASIC to determine the criteria for whether a type of application for a particular regulatory service that is to be charged, is low, medium or high complexity. In the event that the legislative instrument is not made, the default fee will be the lowest fee in that category.

1.19 Schedule 1 to the SIS ASIC Fees Bill amends the SIS Act to allow ASIC to recover costs in relation to an application to vary or revoke the conditions or cancel the registration of an approved SMSF auditor.

### ***Amendments to the Caps***

1.20 When ASIC provides a regulatory service to a requesting entity for chargeable matters, such as reviewing the lodgement or registration of a document for the purposes of the Corporations Act, there is a fee associated with the service. For example there is a fee associated with lodging an Australian financial services licence (AFSL) application. The majority of the fees are imposed under the Fees Act and specified in the Fees Regulations. The fees prescribed in the Regulations will closely reflect the actual costs ASIC incurs when providing regulatory services.

1.21 The Fees Act specifies that the Regulations may prescribe a fee for a chargeable matter by specifying an amount; however the specified amount may not exceed a certain limit:

- The \$10,000 cap will increase to \$200,000;
- the \$50,000 cap will increase to \$300,000; and
- the \$100,000 caps will increase to \$300,000.

1.22 The \$10,000 cap will increase to \$200,000 to allow ASIC to better align its fees to ensure cost recovery of the costs ASIC incurs when providing regulatory services. The new cap will ensure ASIC's regulatory services are cost recovered by the requesting entity and that the specified amount for a chargeable matter will not exceed the \$200,000 cap. *[Schedule 1, item 4, paragraph 6(1)(a) of the ASIC Fees Bill]*

1.23 The \$50,000 cap will increase to \$300,000, to allow ASIC to better align its fees to ensure cost recovery of the costs ASIC incurs when providing regulatory services. The new cap will ensure ASIC's regulatory services are cost recovered by the requesting entity and that the fee or sum of fees for a chargeable matter will not exceed the \$300,000 cap. *[Schedule 1, item 5, subsection 6(3) of the ASIC Fees Bill]*

1.24 The \$100,000 cap will increase to \$300,000, to allow ASIC to better align its fees to ensure cost recovery of the costs ASIC incurs when providing regulatory services. The new cap will ensure ASIC's regulatory

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services are cost recovered by the requesting entity and that the fee or total of the fees for chargeable matters in relation to market licenses will not exceed the \$300,000 cap in a 12 month period. *[Schedule 1, item 6, subsections 6(4) and 6(5) of the ASIC Fees Bill]*

1.25 Fees relating to credit activities are imposed under the Credit Fees Act and specified in the Credit Regulations. No amendments are required to the cap in the Credit Fees Act, as the updated fees will not exceed the current cap limits.

1.26 Fees relating to auditors of SMSF fees are imposed under the *Superannuation Auditor Registration Imposition Act 2012* and specified in the *Superannuation Auditor Registration Imposition Regulation 2012*:

- The \$1,000 cap will increase to \$5,000.

1.27 The \$1,000 cap will increase to \$5,000 to allow ASIC to better align its fees to ensure cost recovery of the costs ASIC incurs when providing their regulatory services in relation to applications to be a SMSF auditor. *[Schedule 1, item 1, paragraphs 4(2)(a) and (b) of the ASIC Superannuation Auditor Registration Bill]*

1.28 The increase of the caps and the cumulative caps in the Fees Act and *Superannuation Auditor Registration Imposition Act 2012* will allow the fees in the Fees Regulations and *Superannuation Auditor Registration Imposition Regulations 2012* to increase to closely reflect the costs ASIC incurs when providing regulatory services. This ensures the costs are borne by the requesting entity and not funded by taxpayers. Regulatory activities are for the benefit of the requesting entity and as such will be cost recovered.

#### ***Amendments to provide the Regulations may differentiate fees***

1.29 The Regulations may provide whether a chargeable matter is of low, medium or high complexity. Certain chargeable matters will have a different fee associated with it, based on the complexity involved. Allowing the Regulations to prescribe a different fee based on the complexity, will allow ASIC to closely reflect the cost incurred by ASIC. *[Schedule 1, item 3, subsection 5A(2) of the ASIC Fees Bill]*

1.30 The Regulations may provide different fees for a chargeable matter based on the type of entity. Certain entity types may require more time and resources from ASIC to assess their application. Allowing the Regulations to prescribe different fees based on the entity type will allow ASIC to closely reflect the cost incurred by ASIC in the fees. *[Schedule 1, item 3, subsection 5A(3) of the ASIC Fees Bill and Schedule 1, item 1, section 8A of the Credit ASIC Fees Bill]*

#### ***Amendment to provide ASIC with a legislative instrument making power***

1.31 A legislative instrument making power will enable ASIC to determine the criteria for whether a type of application for a particular

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service that is to be charged will be low, medium or high complexity. *[Schedule 1, item 3, subsection 5A(4) of the ASIC Fees Bill]*

1.32 ASIC will be able to apply tiered fees based on the complexity of the matter and having regard to any other matter in relation to the entity by whom a fee is payable to enable imposition of different fees depending on the applicant.

1.33 Allowing ASIC the ability to determine the criteria and the complexity via legislative instrument ensures ASIC will be able to better recover the costs of its regulatory activities. This will ensure entities will pay the appropriate fee based on the complexity of the transaction for the service ASIC provides.

1.34 ASIC is best placed to determine the criteria for whether a type of application for a particular service is considered low, medium or high complexity, as ASIC is the regulator administering the services and knows the complexity involved in assessing the application, and therefore the costs involved.

1.35 The actual fees will still be prescribed in the Regulations. The fees prescribed in the Regulations will closely align with ASIC's actual costs. The legislative instrument will ensure entities will know which tier they belong in prior to submitting their application for ASIC's regulatory services. This ensures entities will know what fee they will be required to pay for ASIC's regulatory services.

1.36 ASIC will be able to determine which fee is payable based on the complexity, the entity type and whether the document is lodged electronically or by paper format.

1.37 In the event that ASIC does not make its legislative instrument in time or if its legislative instrument is disallowed by Parliament, the fee to be charged for services that have a low, medium or high complexity, will be the lowest fee for that service. This will provide the default fee, to be of low complexity, if there is no ASIC legislative instrument. *[Schedule 1, item 3, subsection 5A(5) of the ASIC Fees Bill]*

### ***Amendments to the SIS Act***

1.38 The SIS Act is amended to allow the *Superannuation Auditor Registration Imposition Regulations 2012* to provide for two new fees in relation to an application to vary or revoke the conditions or cancel the registration of an approved SMSF auditor. *[Schedule 1, item 1, subsection 128L(1) of the SIS Act]*.

## **Consequential amendments**

1.39 As the scope of the Regulation-making power will now provide for different fees based on the type of entity and the complexity of the

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activity for the Fees Act and entity type for the Credit Fees Act, headings and section numbering have been updated to reflect how the Regulations can differentiate the fees. *[Schedule 1, items 1, 2, section 5A (heading) and section 5A of the ASIC Fees Act and schedule 1, item 2, section 10 of the Credit ASIC Fees Bill]*

## **Application and transitional provisions**

1.40 The ASIC Fees Bill, the Credit ASIC Fees Bill, the ASIC Superannuation Auditor Registration Bill and the SIS ASIC Fees Bill will commence the day after Royal Assent.