

**AUSTRALIAN GOVERNMENT  
RESPONSE  
TO THE  
PARLIAMENTARY JOINT  
COMMITTEE ON CORPORATIONS  
AND FINANCIAL SERVICES  
  
STATUTORY OVERSIGHT OF  
THE AUSTRALIAN SECURITIES  
AND INVESTMENTS  
COMMISSION (ASIC) REPORT  
MARCH 2012**



**Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS)**

**Statutory Oversight of the Australian Securities and Investments Commission (ASIC)  
March 2012**

Government Response

**Recommendation 1**

- The committee recommends that ASIC acquire empirical evidence of its resource allocation to its educative activities and outcomes of these activities. This information should be more fully publicised in ASIC's regular reports and other media accessed by investors especially retail investors.
  
- The Government **supports** the recommendation **in principle** and notes that ASIC, as the Government's financial literacy educator through its National Financial Literacy Strategy (NFLS), provides a coherent framework to improve consumer financial literacy nation-wide.
- ASIC has indicated that it accepts the recommendation and it will provide more detail of the resources it devotes to the NFLS, including making this material available to retail investors.
  - The Government commends ASIC's decision to adopt the Committee's recommendation, and also its continued approach to consumer and investor education.

### **Recommendation 2**

- The committee recommends that ASIC take steps to use available information to collate and analyse definitions of, and approaches to, financial crime, with a view to developing standard definitions and classifications that can be used across the Commonwealth.

### **Recommendation 3**

- The committee further recommends that ASIC give particular attention to ways of distinguishing between criminal fraud and market failure, and the interventions available to ASIC in each case.

- The Government **supports** these recommendations **in principle**.
- The Government considers that the extent to which it would be beneficial for this work to be undertaken would need to be determined by ASIC, subject to its resourcing priorities.
- The Government notes that should these recommendations be carried forward, ASIC would consult with the Attorney-General's Department which has responsibility for criminal law on a whole of government basis.
- The Government's in principle support for recommendation 3 should not be taken to imply any deficiency on the part of ASIC in its current approach to determining the causes of losses to investors.

#### **Recommendation 4**

- The committee recommends that the government provide the basis on which company registration fees are set and an explanation as to the process of determining late fees.

#### **Government response**

- The Government provides the following response to Recommendation 4, on the understanding that the question, while referring to 'company registration fees', is seeking the basis for the setting of both registration fees and annual review fees.

#### *Background*

Following registration, companies receive annual invoices from ASIC for payment of the annual review fee pursuant to the *Corporations Act 2001*, *Corporations (Review Fees) Act 2003*, and related regulations. The purpose of the annual review process is both to collect fees to fund the national corporations scheme, and to ensure the currency of information held by ASIC by providing a clear and regular opportunity for companies to check all details held by ASIC's register, and notify ASIC of any changes.

Section 1351 of the Corporations Act specifies that payment of the annual review fee is required within two months of the company's review date. If a company fails to make payment within the specified period, then a late fee arises under the regulations. The fee is \$69 for payments which are up to one month overdue, and \$287 for payments which are more than one month overdue.

ASIC has the ability to waive a company's obligation to pay a fee in certain circumstances, from a power delegated to it under the *Financial Management and Accountability Act 1997*, and is restricted to situations where circumstances exist that are outside the control of the applicant company or its representatives (including agents).

Company office holders have a legal responsibility to ensure they are aware of their obligation to pay prescribed fees within the specified time limits. Details of these requirements are provided with the annual statement package.

#### *Rationale for Company fees and late fees*

Successive governments have supported the view that corporations fees should be set to ensure that over time, total revenue from the fees approximates the total outlays associated with the national corporations scheme ('the scheme'). The rationale for this is that as the scheme provides general benefits to market participants, including companies, the cost should be borne by them rather than by all taxpayers.

Following the establishment of the national corporations scheme in 1991, the Commonwealth Government initially set fees at a level that would cover the costs of the regulator (then the Australian Securities Commission (ASC), now ASIC) and make a contribution towards other outlays and compensation payments associated with the scheme. These other outlays include the costs of providing policy advice (formerly by the Attorney-General's Department and

now by the Australian Treasury), and of various bodies involved in the administration of the scheme which operate independently of ASIC. Today these include the Corporations and Markets Advisory Committee, the Takeovers Panel, the Financial Reporting Council, the Australian Accounting Standards Board, the Auditing and Assurance Standards Board, the Companies Auditors and Liquidators Disciplinary Board, and the Financial Reporting Panel. Fees are also meant to contribute to the costs of various related law enforcement, court and tribunal activities.

A significant component of the fees raised was to provide compensation payments to be remitted by the Commonwealth to the States to make up for the loss of companies and securities fees payable under the various State-based company registration schemes.

In 1992-93, for example, the scheme raised revenue of \$190 million. The ASC's outlays were \$124 million, the outlays for the other administrative bodies were \$10 million, and compensation to the States and Territories were \$118 million. Consequently, the scheme deficit was \$62 million.

Fee levels were reviewed by a cross-departmental steering committee in 1994, with input from the business community and the ASC. A major principle guiding the review was the preference for cost recovery – that is, for the scheme to run at an approximate fiscal balance. The other key principles were equity between fee-payers, and the efficiency and simplicity of the scheme. The characteristics of the scheme consequently adopted included:

- avoidance of extra costs on business that could not be justified by the objective of fiscal balance;
- a tiered company annual return fee with different levels for 'special purpose' (for example, non-profit organisations), proprietary companies, and public companies, reflecting the relative level of surveillance and supervision required of the regulators; and
- an increase in late fees, to encourage the more timely lodgement of documents and information onto the regulator's databases.

Fee levels were considered again in 2000 as part of the *Simplified Lodgements and Compliance* paper issued under the Corporate Law Economic Reform Program. The principles guiding this review broadly accorded with those of the 1994 review, with an additional emphasis on the need to facilitate the administration of the Corporations Law, and to provide flexibility to facilitate future regulatory reforms.

It was noted in this review that whereas a cost recovery objective may exist at an aggregate level, as an objective for setting fees, this did not mean that individual fees for specific regulatory activities needed to represent full cost recovery for that activity. For example, the annual return fee was set at a level significantly higher than the direct cost of receiving and processing annual returns, because the fees were also designed to cover the costs of other activities relevant to the scheme, such as surveillance, enforcement and prosecution.

The outcomes of the review in 2000 did not diverge significantly from those of the 1994 review in terms of the principles upon which fees were to be set, other than adjusting the levels to reflect Consumer Price Index (CPI) increases.

The last wide-ranging change in fees took place in June 2003, which again adjusted fees in line with CPI increases. Subsequently, only *ad hoc* fee changes took place.

By 2007-08, the scheme raised \$545 million. ASIC's outlays were \$292 million, payments for services to the scheme by other bodies amounted to around \$31 million, and compensation to the States and Territories was \$173 million. Payments to the States and Territories pursuant to the National Corporations Scheme were discontinued after 2007-08 in the 2008-09 Budget. This is the primary reason for the current annual surplus of scheme revenues over expenses.

A review of cost recovery under the national corporations scheme was originally scheduled for completion in time for any implementation to occur as part of the 2008-09 Budget. The review was deferred following the decision to discontinue payments to the States and Territories. It was subsequently abandoned when the Government decided to automatically index in line with the CPI from 1 July 2010.

It should be noted that automatic fee increases in line with the CPI at the start of each financial year had been recommended by both of the reviews undertaken in 1994 and 2000.

#### *Late fees*

The review of fees in 1994 recommended a significant increase in late fees, to encourage the timely lodgement of documents and information onto the regulator's databases. The recommendation was for a late fee of \$50 for the first month, followed by a \$200 fee after one month. The review noted at the time that the behavioural impact of this late fee structure was uncertain, and foreshadowed potential criticism that this structure was aimed at raising revenue rather than ensuring the integrity of the information held by the regulator.

By the time of the review in 2000, a late fee of \$60 applied for lodgements within one month of the specified period, and a fee of \$230 for lodgement more than one month late. The review reiterated the objective of late fees to encourage the timely lodgement of documents so that ASIC's corporate database is accurate and up to date, and that the late fees regime remained an effective mechanism for encouraging the timely lodgement of documents.

The current fee is \$69 for lodgements up to one month overdue, and \$287, for lodgements more than one month overdue.

#### *Summary*

The imposition of fees for company registration and annual returns, including penalties for late lodgement, is a practice common across many jurisdictions. In Australia, fee levels were set in the 1990s to recover costs in line with the expenses of the national corporations scheme. As the scheme has evolved, fee levels have been raised so as to approximately maintain this equity between revenues with expenses. The most significant structural change in recent years has been the automatic indexation of fees in line with the CPI from 2010, this proposal having been recommended twice earlier by reviews of the scheme. A surplus of revenue over expenses has opened up since the abolition of compensation payments to the States and Territories under the scheme at the end of 2007-08. The imposition of a substantial late fee in respect of annual reviews, to encourage prompt lodgement, has been an important component of the scheme since its inception.

