



Corporations (Fees) Amendment Bill 2010

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Law and Bills Digest Section

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Corporations (Fees) Amendment Bill 2010

Date introduced: 10 February 2010

House: House of Representatives

Portfolio: Treasury

Commencement: Sections 1–3 of the Bill commence on the day of Royal Assent. The remaining provisions of this Bill commence at the same time as the provisions of Schedule 1 of the *Corporations Amendment (Financial Market Supervision) Act 2010* (when enacted), commence.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Corporations (Fees) Amendment Bill 2010 (the Bill) supports the Corporations Amendment (Financial Market Supervision) Bill 2010 (the Primary Bill).

The Bill amends the *Corporations (Fees) Act 2001* (the Fees Act) to enable ASIC to impose a fee on financial market operators in relation to ASIC's new market supervisory functions proposed in the Primary Bill.¹

Background

Basis of policy commitment

For further information about the policy commitment behind proposals in the Primary Bill, see the Bills Digest relating to the Primary Bill.²

On 30 May 1996, the Treasurer of the time, announced an Inquiry into Australia's financial system (the Wallis Inquiry).³

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1. C Bowen MP (Minister for Financial Services, Superannuation and Corporate Law), 'Second reading Speech: Corporations (Fees) Amendment Bill 2010', House of Representatives, *Debates*, 10 February 2010, p. 10.
 2. S Scully, 'Corporations Amendment (Financial Market Supervision) Bill 2010', *Bills digest*, no. 109, 2009–2010, pp. 3–5.

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In its report, the Wallis Inquiry recommended that regulatory agencies should be self-funding by collecting sufficient revenue from the financial entities that they regulate.⁴ According to the Wallis Inquiry, the costs of regulation should be borne by those who benefit by the regulation.⁵

Committee consideration

As at 18 February 2010, the Standing Committee on the Scrutiny of Bills had not yet released any comments on the Bill.

However, the Scrutiny of Bills Committee is likely to draw attention to item 4 of this Bill, which provides that either the amount of the fee for market supervision, or the method for calculating that fee, is to be prescribed by regulation.

In addition, as at 18 February 2010, the Senate Standing Committee on the Selection of Bills had not yet resolved whether to refer the Bill to a parliamentary committee.

Stakeholder comments

Major concerns for stakeholders are that the Bill does not provide for sufficient transparency and accountability in proposed cost recovery processes and that cost efficiencies that flow from existing arrangements may, in fact, be lost in the new arrangements.⁶

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3. For information about the Wallis inquiry and report, see Financial System Inquiry website viewed 18 February, 2010, <http://fsi.treasury.gov.au/content/default.asp>
 4. See Financial System Inquiry, *Final Report*, March 1997, pp. 37 and 532, viewed 12 February 2010, <http://fsi.treasury.gov.au/content/downloads/FinalReport/overview.pdf>; <http://fsi.treasury.gov.au/content/downloads/FinalReport/chapt12.pdf>
 5. *Ibid.*, p. 532.
 6. See, for example: Australian Securities Exchange (ASX), *Comments to Exposure Draft and Consultation Paper – Reform to the supervision of Australia’s financial markets*, 22 December 2009, p. 11, viewed 17 February 2010, <http://www.treasury.gov.au/documents/1712/PDF/ASX.pdf>; Australian Financial Markets Association (AFMA), *Reforms to the supervision of Australia’s financial markets*, 24 December 2009, p. 9, viewed 17 February 2010, <http://www.treasury.gov.au/documents/1712/PDF/AFMA.pdf>; Australian Bankers’ Association (ABA), *Reforms to the supervision of Australia’s financial markets*, 24 December 2009, p. 3, viewed 17 February 2010, <http://www.treasury.gov.au/documents/1712/PDF/ABA.pdf>; Stockbrokers Association of Australia (SAA), *Reforms to the supervision of Australia’s financial markets – Treasury Consultation Paper and Exposure Draft Bill – Submission*, 23 December 2009, p. 8, viewed 17 February 2010, <http://www.treasury.gov.au/documents/1712/PDF/SAA.pdf>.

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Financial implications

The Government does not expect any financial impact on the Government arising from proposed amendments in the Bill and expects that the costs of levies imposed by the Bill will be off-set by market operators having lower operational costs as they would no longer be supervising trading on their markets.⁷

Main provisions

The Fees Act provides for fees and taxes to be imposed for things done under the *Corporations Act 2001*.

‘Chargeable matter’ is defined in section 4 of the Fees Act and **item 1** of the Bill proposes to amend that definition by adding to it ASIC’s supervision of financial markets functions as proposed in the Primary Bill.

Section 6 of the Fees Act provides for matters relating to the amount of fees in relation to chargeable matters as defined in the Act.

Item 3 of the Bill proposes to amend section 6 by inserting **new subsection 6(6)** into the Fees Act, to the effect that section 6 would not apply to ASIC’s supervision of financial markets functions as proposed in the Primary Bill.

Item 4 of the Bill then proposes to insert **new section 6A** into the Fees Act, providing that regulations may prescribe a fee for ASIC’s supervision of financial markets functions as proposed in the Primary Bill, by specifying either a fee amount or a method of calculating such amount.

The Explanatory Memorandum states that the Bill does not place a cap on fee amounts because:

... the amount it will cost to supervise the market, and therefore also the amount it will be necessary for ASIC to recover, will change dramatically as financial markets enter and leave Australia, and as the amount of trades executed on markets in Australia fluctuate in response to market conditions. The formula for calculation of the levy on market operators will be set out in the Regulations and will be consulted upon with industry before being introduced.⁸

Section 7 of the Fees Act provides for liability to pay fees for chargeable matters and time when such liability is incurred. **Item 5** of the Bill proposes to amend **subsection 7(1)** of

7. Explanatory Memorandum, Corporations Amendment (Financial Market Supervision) Bill 2010, pp. 3–4.

8. *Ibid.*, p. 15.

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the Fees Act by specifying that licensed market operators would be liable for paying fees and the regulations will specify when fees will be imposed.

Concluding comments

The Bill further implements the recommendation made by the Wallis Inquiry. However, as in the Primary Bill, the detail is yet to be seen and cannot be commented on at this stage.

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