

Simplified Lodgments and Compliance

Streamlining paperwork under the
Corporations Law

Corporate Law Economic Reform Program
Proposals for Reform: Paper No. 7

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ISBN 0 642 74030 5

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The Government is seeking comments from interested parties on the detail of the proposals in this paper. The comments should be forwarded to the following address:

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FOREWORD



As the Minister responsible for Corporations Law, it gives me great pleasure to present the 7th stage of the Government's Corporate Law Economic Reform Program: CLERP 7 — *Simplified Lodgments and Compliance*.

The Government is committed to ensuring regulation does not impose unnecessary paperwork or other compliance burdens, and is responsive to business needs. Businesses, especially small businesses, want to get on with the job of building their enterprises free from unnecessary red tape. We have demonstrated our commitment to these objectives by establishing the Small Business Deregulation Taskforce and implementing nearly all of its recommendations. The initiatives contained in this paper are a further illustration of our commitment in this respect.

The reforms proposed in this paper will further cut the compliance burden by streamlining the relationship between business and the Australian Securities and Investments Commission. The initiatives are a further plank in the Government's objective of providing a modern and efficient regulatory framework in which business and consumers can operate.

As with other CLERP reforms, these initiatives will help achieve efficiencies for business which in turn will encourage free enterprise and wealth creation for the benefit of all Australians.

I welcome feedback on our CLERP 7 initiatives and look forward to working with interested parties to progress these reforms.

Hon. Joe Hockey MP
Minister for Financial Services & Regulation
Parliament House
Canberra

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ABBREVIATIONS

ABN	Australian Business Number
ABR	Australian Business Register
ACN	Australian Company Number
ASIC	Australian Securities and Investments Commission
ASX	Australian Stock Exchange
BEP	Business Entry Point
CLERP	Corporate Law Economic Reform Program
CPI	Consumer Price Index
GST	Goods and Services Tax
PIP	ASIC's Public Information Program

GLOSSARY OF TERMS

Annual Fee — is a payment due to the Commonwealth and payable to ASIC by a company in place of the current annual return fee prescribed by the Corporations (Fees) Regulations. For further details see Part 3.4 and Part 7.

Annual Fee Invoice — is an invoice for the Annual Fee issued by ASIC. For more information see Part 3.4.

Australian Business Number — is a unique business identifier issued by the Australian Business Registrar under *A New Tax System (Australian Business Number) Act 1999*. For more information see Part 6.

Australian Business Register — is a register of Australian businesses established under *A New Tax System (Australian Business Number) Act 1999*. For more information see Part 6.

Database — is the computer system operated by ASIC to maintain the Register of Companies and other registers maintained by ASIC under the Corporations Law.

Electronic Lodgment — is a means for companies to lodge statutory notices of changes to particulars and annual returns electronically, either through the Internet or through an ASIC developed process (named EDGE).

Electronic Payment Facility — includes direct debit payments from a customer's bank account to ASIC's bank account.

Extract of Particulars — is a statement setting out the current particulars about a company as recorded on the Register of Companies. The extract is issued to companies by ASIC once a year with the Annual Fee invoice or whenever a change to particulars has been lodged. For more information see Part 3.5.

Law — means the Corporations Law.

National Scheme — means the national system of law for the regulation of companies and the securities and futures industries, which came into operation on 1 January 1991 and is administered by ASIC.

Public Information Program — is an ASIC program dealing with the collection, storage and delivery of information and the provision of services to ASIC customers. It includes the Australia-wide Business Centre network and the Information Processing Centre.

Register of Companies — is the register kept by ASIC under the Corporations Law which includes particulars of companies.

Return of Particulars — is a document containing the particulars of a company from the Register of Companies which is sent by ASIC to the company as a means of periodically confirming those particulars. The company is required to complete or amend the information in the return, then sign, date and lodge the return within one month of issue. For more information see Part 3.6.

Special Purpose Company — is a company as defined in Regulation 2A of the Corporations (Fees) Regulations which is entitled to pay a reduced annual return fee.

Third Party Agency Facility — is a process where fees due to the Commonwealth under the Corporations (Fees) Regulations are paid to ASIC through a third party agent such as Bpay and Bill Pay facilitated by most major banks in Australia and Australia Post.

PART 1: REFORM PROPOSALS

PROPOSAL NO. 1: ABOLITION OF COMPANY ANNUAL RETURNS

- Companies would no longer be required to lodge an annual return with ASIC.
- However, companies would still be required to notify ASIC of any changes in company particulars as they occur.
- All companies would be subject to an Annual Fee, payable on the anniversary of the company's registration (or an alternative date nominated by the company and agreed by ASIC).
- An Extract of Particulars would be sent to the company by ASIC with an Annual Fee invoice. Unless ASIC is advised otherwise, payment of the Annual Fee would be taken as confirmation of details about the company shown in the Extract of Particulars.
- ASIC would have discretion to require a company to lodge a Return of Particulars to confirm information kept on the Register of Companies.
- If a company fails to pay its Annual Fee by the due date, it would incur a late payment fee and may be required to lodge a Return of Particulars.

PROPOSAL NO. 2: STREAMLINING DOCUMENT LODGMET REQUIREMENTS

- Several existing forms used for notifying changes in particulars would be replaced by a single Multi Purpose Form.
- The existing facilities for electronic notification of corrections and changes to company particulars will be enhanced.

- The Corporations Law would be amended to facilitate, and encourage, the electronic lodgment of documents.

PROPOSAL NO. 3: CREATION OF BUSINESS ADVISORY BOARD

- To ensure direct input from business on changes affecting them, a Business Advisory Board would be established to advise ASIC on the initiatives and operations of its PIP.
- The Advisory Board would be appointed and chaired by ASIC, with members drawn mainly from the business community and professional organisations.

PROPOSAL NO. 4: OVERHAUL OF CORPORATIONS LAW FEES

- An Annual Fee for companies would be introduced in conjunction with the abolition of the requirement to lodge annual returns, replacing the existing annual return fee.
 - The Annual Fee for proprietary companies would be set at \$200 (the amount of the present annual return fee) and be capped at that level for three years.
 - Public companies that operate solely as strata title companies would be brought within the definition of ‘special purpose companies’.
- Occupational licence holders would pay an Annual Fee rather than a fee for each document lodged with ASIC.
 - Fees for licence holders would be calculated on a sliding scale according to the number of representatives the licence holder has.
- Fees for prospectuses would be changed to a differential scale according to the type of disclosure document — \$1,800 for an offer information statement and profile statement and \$4,000 for a short-form or full-disclosure prospectus.

- The existing flat-rate fee structure for lodging takeover documents would be retained, but the amount of the fee would be set at \$4,000.
- Fees for occupational licence holders, fundraising and takeover activities would continue to be monitored with a view to ensuring that they are progressively increased to a level that fully covers regulatory costs.
- The existing late fee regime, which depends on whether documents are lodged more or less than one month late, would be retained.
 - The late fee regime would also apply to late payment of annual fees.
- The schedule of fees payable by companies would be simplified, with the number of items reduced from 51 to about 30.
- The fees to apply in 2001-02 and later years would be based on the fees proposed to apply from 1 July 2000 with an appropriate adjustment to reflect movements in the Consumer Price Index (CPI) (except that the Annual Fee for proprietary companies would be capped at \$200 until 30 June 2003).

PART 2: INTRODUCTION

On 17 September 1998, the Treasurer announced the seventh stage of the Corporate Law Economic Reform Program (CLERP 7) as part of the Government's objective of cutting costs for business and developing a pro-enterprise system of corporate law.

Among the CLERP 7 initiatives foreshadowed by the Treasurer were:

- the elimination of annual returns, with companies only advising ASIC when there has been a change in company details;
- a review of fees set under the Corporations Law;
- initiatives to assist ASIC in making optimal use of modern business practices and new communications technology; and
- the establishment of a Business Advisory Board to provide strategic advice on the direction and initiatives of ASIC's PIP.

Funding of \$9.1 million over four years was announced in the 1999-2000 Budget to assist ASIC in implementing these initiatives.

This paper outlines proposals to implement CLERP 7 by simplifying document lodgment and compliance procedures for companies under the Corporations Law. It also canvasses a proposed new schedule of fees payable under the Corporations (Fees) Regulations.

Under the Corporations Law each company is required to ensure that ASIC holds current details of its name, Australian Company Number (ACN), registered office address, principal place of business, directors and secretary, members, details of shares on issue and options granted, and name of ultimate holding company. Maintenance by ASIC of an up to date Register of Companies accessible to the public is vital to the confidence of investors in the integrity of the market and to fostering trust in business dealings. At the same time, the Government wants to ensure that information requirements under the Corporations Law do not impose unnecessary compliance costs on business.

The proposals in this paper apply to both public and proprietary companies and to registered schemes. A reference to a company in this paper includes a reference to a registered scheme. The proposals do not apply to foreign companies, which would continue to comply with existing reporting requirements.

2.1 COMPANY ANNUAL RETURNS AND REFORMS TO DOCUMENT LODGMENT REQUIREMENTS

Companies would no longer be required to lodge an annual return with ASIC but would continue to notify ASIC of changes in company particulars as they occur. An Annual Fee would replace the existing annual return fee.

Each year companies would receive from ASIC an invoice for the Annual Fee and an Extract of Particulars setting out company details recorded on the Register of Companies. A Multi Purpose Form would also be provided for the company to use to notify any changes to these details as they occur.

The due date for payment of the Annual Fee would be the anniversary date of the registration of the company. (Currently, annual returns are required to be lodged by 31 January each year.) However, companies could nominate an alternative date, subject to ASIC's agreement.

In addition to the present cash and cheque payment methods, companies would be offered electronic and agency payment methods.

Currently, changes to members of a company or changes in its ultimate holding company are notified in an annual return. To continue to collect this information, companies that are not required to lodge financial statements would need to notify ASIC of any changes in these details as they occur. Companies required to lodge financial statements would continue to notify current particulars of members and ultimate holding company when lodging their financial statements.

Whenever a company notifies a change in particulars, ASIC would confirm the change with an updated Extract of Particulars and supply a fresh Multi Purpose Form for future use.

To help ensure that the Register of Companies is accurately maintained, ASIC may at any time request a company to lodge a Return of Particulars containing information similar to that included in the present annual return (as specified in section 348 of the Corporations Law). This could occur if ASIC became aware that information on the Register was incorrect, if the Annual Fee had not been paid by the due date, or if no change in particulars or other documents had been lodged for a number of years.

ASIC recognises the demand for, and actively encourages, the electronic lodgment of information. Currently, around 60 per cent of annual returns, and around 35 per cent of notifications of change of particulars documents are lodged with ASIC electronically and these figures are increasing.

While continuing to provide facilities for paper based lodgment and payment over the counter or by mail, ASIC will further encourage electronic lodgment and payment. In this paper, a reference to a document being sent or lodged includes, in most cases, electronic as well as paper based transmission.

Over time, ASIC would also implement facilities for companies to more easily notify corrections of errors on the ASIC database and extend the facility to make changes of basic statutory particulars electronically, including via the Internet.

2.2 BUSINESS ADVISORY BOARD

To ensure direct input from business on changes affecting them — including the implementation of changes flowing from this paper — a Business Advisory Board would be established to advise ASIC on the initiatives and operations of its PIP. The Board would be appointed and chaired by ASIC, with members drawn mainly from business and professional organisations affected by, or having an interest in, ASIC's operations.

2.3 AUSTRALIAN BUSINESS NUMBER AND AUSTRALIAN BUSINESS REGISTER

In August 1998, the Government announced proposals for a single business identifier, the Australian Business Number (ABN) and the establishment of an Australian Business Register (ABR) as part of its tax reform package. Legislation — *A New Tax System (Australian Business Number) Act 1999* — was enacted in July 1999.

These proposals will help shape the environment within which the CLERP 7 changes operate.

As the unique business identifier for all government purposes (including Goods and Services Tax (GST) registration), the ABN has the potential to significantly reduce the burden for business of using multiple identifiers in their dealings with government. For companies that are carrying on a business as defined by the taxation laws, the ABN will, over time, replace the ACN. This will require amendment of the Corporations Law which currently requires a company to show its ACN on public documents.

The ABR will be built up by the Australian Taxation Office from November 1999, with the bulk of existing taxpaying business entities expected to have ABNs issued to them and recorded in the ABR by May 2000. The ABR will record basic identifier information for each business such as name, type of entity, ABN, address for service of notices, principal place of business, e-mail address, and name of company public officer (although not all of this data will be searchable on the register).

Once operational, the ABR will be able to be used by all Commonwealth Government agencies. By updating its ABR information online through the Government's BEP facility, or through one of the participating agencies, a business potentially will be able to have its information automatically updated on registers held by all the Government agencies it deals with. Non-ABR information required to be notified to agencies will continue to be advised to the agency concerned, facilitated by the BEP, if the company wishes to use that channel.

Thus, it is not intended that the ABN and ABR replace the existing registration and regulatory requirements of the Corporations Law. Wherever possible, however, notifications through either ASIC or the ABR would be shared to reduced the number of interactions with government and minimise the need to notify the same or similar information to ASIC, the ABR or other agencies.

Further details of the operation of the ABN and ABR will be announced by the Government as they are settled. ASIC will then be able to assess their full effect on the implementation of system changes underlying the CLERP 7 proposals. Any resulting changes will be developed in the context of the continuing goal of reducing business compliance burdens.

2.4 CORPORATIONS FEES

This paper proposes a range of measures aimed at simplifying the number of fees and ensuring that the fee arrangements operate efficiently, effectively, and equitably.

It is proposed that the existing fees schedule be reduced from 51 to about 30 items. This would be achieved by:

- introducing Annual Fees in place of fees for individual documents (other than late fees);

- rationalising some fees, including those for registration of companies and notices about charges;
- broad-banding some application fees; and
- simplifying search fees.

Other proposals include:

- setting fees for occupational licence holders on the basis of the number of representatives they have (rather than on a flat-fee basis as at present); and
- revising the fees for lodgment of fundraising and takeovers documents in line with the changes in the *Corporate Law Economic Reform Program Act 1999*.

The paper proposes that the Annual Fee for proprietary companies be set at \$200 (the amount of the present annual return fee) from 1 July 2000 and be capped at that level for three years. (Had fees been adjusted in 1999-2000 for CPI movements, the present fee would have been \$210.)

PART 3: COMPANY ANNUAL RETURNS

3.1 INTRODUCTION

The proposals in this Part are aimed at reducing administrative burdens on companies by eliminating annual return requirements and providing a simpler way of notifying changes in company details. Companies which have complied with the Corporations Law and notified changes in a timely way would not be required to lodge an annual document to confirm their particulars.

Every company is currently required to lodge an annual return with ASIC. Each year, ASIC provides the company with either a pre-printed annual return or an electronic download of the return, containing company particulars recorded on the Register of Companies at the time of issue. The company is required to lodge either the pre-printed return or an electronic return confirming that the particulars are correct, or making appropriate changes if they are not. The return has become a means of auditing and confirming, on an annual basis, that the particulars in the Register of Companies are correct, and that the company remains solvent.

Changes in the annual return over the last 15 years bring into question the usefulness and justification for an annual return in the form currently required. ASIC uses the return to confirm annually the particulars it holds. Some companies may use the return as an annual reconciliation to notify changes that occurred through the year (rather than as they occur, as required by the Corporations Law). Searchers of company information now rely more heavily on computer-generated company search products which are often more current than the annual return.

By using technology, and enhanced education and compliance programs, the annual returns regime can be replaced with a more effective process that would lighten the compliance burden on business, promote the timely notification of changes in particulars, and preserve and enhance the accuracy of the Register of Companies.

3.2 ANNUAL RETURNS NOT REQUIRED

Companies would no longer be required to lodge annual returns. However, they would still be required to notify ASIC of changes in particulars, as those changes occur, within the statutory period for notifying the change. ASIC would implement a number of educative and facilitative measures to promote timely compliance by companies to ensure that the particulars in the Register of Companies are kept up to date.

Companies would pay an Annual Fee in place of the present annual return fee. ASIC would issue an invoice for the Annual Return fee together with an Extract of Particulars containing details about the company as recorded in the Register of Companies. The company would check that the details in the Extract are correct at the time of paying the Annual Fee. Payment of the fee would be taken as confirmation by the company that the particulars are correct.

To ensure the accuracy of the Register of Companies, ASIC would have the statutory discretion to request a company to lodge a Return of Particulars confirming its company details. This discretion could be exercised where a company has not lodged a change in particulars or any other documents with ASIC for some years, where it has come to ASIC's attention that the particulars recorded may be incorrect, or where a company has failed to pay the Annual Fee by the due date. The Return of Particulars would contain the information required under section 348 of the Corporations Law to be included in the existing annual return, and would need to be lodged within one month of the date of issue.

3.3 NOTIFYING CHANGES TO MEMBERS' PARTICULARS

Two items that are currently included in annual returns, but are not otherwise notifiable, are particulars of members of a company and any ultimate holding company.

Changes in these details would become notifiable as they occur for companies not required to lodge financial statements. Companies required to lodge financial statements would be required to provide details of the top 20 members in each class of membership and any ultimate holding company when lodging their financial statements (Form 388).

Presently, changes in members' particulars are updated on the database once a year from the annual return. Under this proposal,

these particulars would be recorded from the source documents — that is, Applications to Register Companies (Form 201), Notifications of Issuing of Shares (Form 207) and any other notices of change in members' particulars.

Although changes in particulars of members have not previously been notifiable outside of an annual return, the impact of this requirement for companies and for ASIC should be relatively small. Often, a change in members is associated with other changes which are notifiable as they occur, while ASIC already processes information about members as part of the annual return process.

This proposal would be of significant benefit to the searching public in addition to improving the accuracy and integrity of the ASIC register because, at present, particulars of members and share details are only updated on the register of companies once a year, from the annual return. Users of corporate information would have access to current details of who stands behind the corporate veil of a company. This would be an enhancement to the current search service.

3.4 ANNUAL FEE

Companies would pay an Annual Fee each year in place of the present annual return fee. The amount of the Annual Fee, which would be prescribed in the Corporations (Fees) Regulations, is discussed in Part 7.

ASIC would send to each company an Annual Fee invoice together with an Extract of Particulars (discussed in Part 3.5) and a Multi Purpose Form (discussed in Part 4). The invoice would be issued at least one month prior to the payment due date.

Companies that lodge documents in paper form would be sent the Annual Fee invoice, Extract of Particulars and Multi Purpose Form by post. All other companies would receive these documents in electronic form.

To replace the current requirement that all companies lodge an annual return by 31 January each year, the due date for payment of the Annual Fee would be the anniversary date of the registration of the company. The legislation would enable a company to apply for a due date other than the anniversary date, allowing the company to pay the Annual Fee at a time that suits its business needs. This provision might be of particular benefit to companies in a group, or to a number of companies represented by an appointed agent who prefers to pay the Annual Fee for those companies at the same time. ASIC would need to

agree to the due date for payment of the fee being different from the anniversary date.

The first due date for payment of the Annual Fee by a newly registered company would be the first anniversary date of registration.

Companies would be offered several options for payment of the Annual Fee, including electronic payment facilities and third party agency facilities such as those provided by many banks and Australia Post.

Payment of the Annual Fee would be confirmation by the company that it has checked and confirmed the details in the Extract of Particulars issued to it.

Payment of the Annual Fee would be a separate requirement from lodgment of any changes to particulars or, if required by ASIC, a Return of Particulars.

Late payment fees would apply to the Annual Fee if it is not paid by the due date. The structure of these fees is discussed in Part 7.

If a company has not paid the Annual Fee by the due date, ASIC would send the company a Return of Particulars with a Final Annual Fee invoice, including the late payment fee. This Return would need to be completed, signed, and lodged by a specified date (not less than one month from the date of issue). Continued failure to comply could result in penalty action and possible prosecution similar to the existing process for non-lodgment of an annual return.

ASIC would implement education strategies to assist companies to comply so as to maintain the integrity of the information on the Register of Companies. These strategies could include targeted messages on invoices and other communications with the company, and an education program for newly registered companies and newly appointed directors.

If a company has been requested by ASIC to lodge a Return of Particulars for any reason, including non-payment of the Annual Fee, that obligation would continue even if the company subsequently pays the Annual Fee.

ASIC would establish guidelines for any waiver, in exceptional circumstances, of the late payment fee and a requirement to lodge a Return of Particulars where this requirement is due to late or non-payment of the Annual Fee.

3.5 EXTRACT OF PARTICULARS

The Extract of Particulars would set out a company's details as recorded on ASIC's database. ASIC would issue an Extract of Particulars at least once a year with the Annual Fee invoice. A Multi Purpose Form would also be provided for the company to notify changes to any of the particulars in the Extract if they have changed, or to notify any subsequent changes.

Companies would be required to check that the details in the Extract of Particulars issued with the Annual Fee invoice are correct and to lodge a Multi Purpose Form to change the particulars where they are incorrect. Payment of the Annual Fee by the due date would be taken as confirmation that the company has checked the particulars on the Extract, and that it has either confirmed that the particulars are correct, or has taken the appropriate action to notify changes.

ASIC would record on the Register of Companies when the company has paid the Annual Fee. This would indicate to the public that the company has confirmed the accuracy of its details, as contained in the Extract of Particulars issued with the Annual Fee invoice.

Whenever a company notifies a change to particulars, ASIC would confirm the change with an updated Extract of Particulars.

The Extract of Particulars will serve to inform the company of the details recorded on the Register in relation to it. It will also allow the company to confirm that any changes have been correctly recorded on the Register.

The Extract of Particulars would be an information document issued by ASIC rather than a document that a company can amend and lodge with ASIC to notify changes in particulars.

3.6 RETURN OF PARTICULARS

A Return of Particulars would be issued to a company, at ASIC's discretion, in a limited range of circumstances. It would contain information about the company from the Register of Companies, similar to that set out in section 348 of the Corporations Law for annual returns. The company would be required to complete or amend the information in the Return, then sign or authenticate, date and lodge the Return within one month of issue.

If a company has been sent a Return of Particulars, it may notify any changes on the Return itself. (Provisions similar to those in subsection 345(4) of the Corporations Law would apply to those changes.) Alternatively, the company may lodge an appropriate notification of change form.

ASIC would use the Return of Particulars to help maintain public confidence in the accuracy and integrity of the Register of Companies. A Return of Particulars could be issued to a company:

- where it has not paid the Annual Fee by the due date. ASIC would also send the company a Final Annual Fee invoice including a late payment fee;
- where it has come to ASIC's attention that the company's details on the Register of Companies may be incorrect; or
- where a company has not notified a change or lodged any other documents with ASIC for a period of years. In this case the Return of Particulars would be sent with the Annual Fee invoice.

There would be no lodgment fee due on the Return of Particulars. However, a late fee would apply if the Return was not lodged by the due date and late fees would also apply to any late notifications of changes to particulars made in the Return.

3.7 SOLVENCY RESOLUTION UNDER SECTION 346

Directors would continue to be required to pass an annual resolution of solvency under section 346 of the Corporations Law. The resolution would need to be passed within one month before the due date for payment of the Annual Fee. The Annual Fee invoice would include a reminder of this obligation.

As at present, the requirement to pass an annual solvency resolution would not apply to companies that are required to lodge financial statements with ASIC, as those statements include matters relating to solvency.

Other companies would not be required to advise ASIC that they have complied with the solvency resolution requirement, provided the directors have resolved that the company is solvent.

However, a company would be required to notify ASIC no later than the due date for payment of the Annual Fee where its directors have not passed the resolution or have resolved that the company is not

solvent. A new form would be prescribed for this purpose and would also be included in the Multi Purpose Form issued with the Annual Fee invoice.

Failure by the directors to resolve each year, within the required time frame, whether, in their opinion, the company was solvent would be an offence (as it is now). It would also be an offence if the company failed to notify ASIC of either a failure to pass the resolution or of the passing of a resolution that the company was not solvent.

The minutes recording directors' resolutions would be evidence of compliance by directors with this requirement.

Where, in the circumstances indicated in Part 3.6, a company is asked to complete and lodge a Return of Particulars, it would be required to confirm that the section 346 requirement for an annual solvency resolution by directors has been continuously met.

PROPOSAL 1 — ABOLITION OF COMPANY ANNUAL RETURNS

- Companies would no longer be required to lodge an annual return with ASIC.
- However, companies would still be required to notify ASIC of any changes in company particulars as they occur.
- All companies would be subject to an Annual Fee, payable on the anniversary of the company's registration (or an alternative date nominated by the company and agreed by ASIC).
- An Extract of Particulars would be sent to the company by ASIC with an Annual Fee invoice. Unless ASIC is advised otherwise, payment of the Annual Fee would be taken as confirmation of details about the company shown in the Extract of Particulars.
- ASIC would have discretion to require a company to lodge a Return of Particulars to confirm information kept on the Register of Companies.
- If a company fails to pay its Annual Fee by the due date, it would incur a late payment fee and may be required to lodge a Return of Particulars.

PART 4: STREAMLINING DOCUMENT LODGMET REQUIREMENTS

4.1 INTRODUCTION

The reforms outlined in this Part are intended to simplify processes for companies to notify ASIC of any changes in company particulars and ensure that the particulars maintained by ASIC are current.

Currently the Corporations Law requires a separate notification form for each change in company details. For example, a company wishing to advise a change in registered office and a change in officeholders must lodge two separate notifications. ASIC would rationalise present arrangements by introducing a Multi Purpose Form.

Market research conducted by ASIC over several years has indicated a demand by companies for access to the information held by ASIC about them. The annual return provides companies with a snapshot of these particulars and often alerts them to the need to notify a correction or change. With the abolition of annual returns, it is proposed that this purpose be served by the Extract of Particulars to be sent to (or accessed electronically by) companies with the Annual Fee invoice and whenever a correction or change to particulars has been notified.

Usage of ASIC's electronic lodgment systems is increasing rapidly and demand for access to other electronic lodgment facilities, such as the Internet, is growing. To meet this trend, ASIC will seek to expand its electronic lodgment processes.

4.2 PROMOTING TIMELY COMPLIANCE

The Corporations Law requires companies to notify ASIC, within a specified period, of any changes in company particulars. In most cases the period is 14 days from the date of the change. However, some companies have relied on the annual return process to review company particulars, resulting in changes being notified well outside the specified period and late fees being incurred. While facilitating at least an annual review by companies of their particulars, this approach

is contrary to the intention of the Corporations Law that changes be notified when they occur.

Companies would be encouraged to meet their obligations to lodge changes to particulars as they occur and not rely on an annual review. It is intended that this would be achieved through:

- increased communication with companies and their agents;
- confirming notification of change lodgments; and
- targeted educational activities.

Under the new arrangements, companies would be sent at least once a year (with the Annual Fee invoice) an Extract of Particulars from the records maintained by ASIC and a Multi Purpose Form. Companies would be required to check that the details on the Extract of Particulars are accurate. If corrections are required, they would be advised to ASIC using the Multi Purpose Form.

If a company has been sent a pre-printed Return of Particulars to be lodged, it may notify changes to particulars on that form. Provisions similar to those in section 345 of the Corporations Law would apply to those changes.

Whenever a company notifies a correction or lodges a change to particulars, ASIC would confirm the change by sending the company a fresh Extract of Particulars along with a Multi Purpose Form for future use.

4.3 FORMS RATIONALISATION

The prescribed forms for notifying changes to company particulars would be rationalised. This would simplify the notification process and assist companies in complying with their statutory obligations.

The Multi Purpose Form would replace a number of the commonly lodged notification of change forms, such as those used to notify a change in registered office and principal place of business (Form 203), a change in particulars of office holders (Form 304), and an issue of shares (Form 207).

Changes to section 348 of the Corporations Law implemented with the commencement of the *Company Law Review Act 1998*, removed the requirement for companies to advise in an annual return the nature of business or principal activity of the company and the contact details at

the principal place of business. The omission of this information has diminished the usefulness and commercial value of the Register of Companies and users of corporate information seeking these details have had to refer to other sources to obtain them at additional effort and cost. It is proposed to resume collection and provision of this information through the Multi Purpose Form, but not as time critical notifiable changes.

4.4 MAKING CORRECTIONS TO ERRORS AND CHANGES TO PARTICULARS ELECTRONICALLY

A substantial number of lodgments with ASIC are already made by electronic means. Annual returns and notifications of change can be lodged through a custom built electronic process (called EDGE, discussed in the following section) allowing agents with large numbers of documents and the necessary software to lodge these documents on behalf of their client companies. This process was recently expanded to include the electronic lodgment of applications to register companies and to allow company officers to lodge documents over the Internet.

It is proposed that companies be able to notify corrections to errors on the ASIC database electronically. The facility to lodge changes to the Register of Companies by the Internet would also be expanded. These facilities — which would supplement existing electronic, over the counter and mail communications — would be implemented over time.

ASIC is already trialing a process to receive notifications of change by the Internet.

ASIC would have discretion to determine the types of authentication that could be used to ensure that the person notifying the correction or change has been authorised by the company to provide information to ASIC. In exercising this discretion, ASIC would have regard to a range of criteria including:

- how the information is to be lodged;
- available authentication technologies; and
- the degree of client acceptance of the form of authentication.

ASIC would also take into account any whole of government approach to authenticating electronic transactions.

ASIC would also have discretion to determine what information could be lodged via the Internet or how corrections to errors may be notified. This discretion would be based upon a number of criteria such as:

- the complexity of the information, including supporting data required;
- ASIC's assessment of the risk in accepting the information in that way;
- the nature of the company; and
- frequency of lodgment of the type of information.

4.5 ELECTRONIC TRANSACTIONS

ASIC has progressively increased its electronic commerce capability over the past few years on the basis that it has the potential to benefit business and consumers in terms of costs, efficiency and choice. In the year 1998-99 this equated to more than five million electronic transactions with ASIC clients.

One of these services is the EDGE system which is EDI based, using pins and passwords for authentication, and caters for high volume lodgment intermediaries. In contrast, the Registers facility provides a simple internet lodgment service and is designed for use by small intermediaries and individuals. ASIC's company registration facility, ECR, has taken a different approach again because of the nature of company registration and the associated fees involved. It uses the Internet transport layer and provides a strong form of security and authentication by use of digital certificates stored on smartcards or diskettes to authenticate the information lodged with ASIC.

On-line searches of the ASIC database for basic company details can be made by the public on the Internet with the National Names Index service, Netsearch. Searching of ASIC registers is also available on-line. Full company on-line searches are available through ASIC's network of Information Brokers and account for 95 per cent of all searches of ASIC's databases.

ASIC will continue to expand the number of transactions that can occur electronically and the methods by which such transactions may be made.

At the same time, ASIC will continue to provide facilities for paper based lodgment and payment processes over the counter or by mail.

However, ASIC will encourage the electronic lodgment of data where lodgers have access to electronic lodgment facilities.

For those companies that continue to lodge documents by paper, ASIC would send the Annual Fee invoice, Extract of Particulars, Multi Purpose Form, any Return of Particulars, and any confirmation of changes to particulars, by post.

Companies utilising an electronic lodgment system could receive the Annual Fee invoice electronically and would be able to make changes in particulars and receive confirmation of those changes electronically. They will also be able to receive and lodge a Return of Particulars electronically.

It is proposed that the Corporations Law would enable ASIC to accept notifications of changes to particulars in the register that are lodged electronically without the company or its appointed agent retaining a paper copy, provided that ASIC is satisfied that the lodgment is appropriately authenticated.

PROPOSAL 2 — STREAMLINING DOCUMENT LODGMET REQUIREMENTS

- Several existing forms used for notifying changes in particulars would be replaced by a single Multi Purpose Form.
- The existing facilities for electronic notification of corrections and changes to company particulars will be enhanced.
- The Corporations Law would be amended to facilitate, and encourage, the electronic lodgment of documents.

PART 5: BUSINESS ADVISORY BOARD

5.1 INTRODUCTION

It is proposed to establish a Business Advisory Board to provide ASIC with strategic advice and feedback on the initiatives and operations of its PIP.

The members of the Board would represent those areas of business and industry having an interest in ASIC objectives and deliverables.

ASIC would be responsible for the administration of the Board which would be established administratively rather than under legislation. The proposal would not require amendment of the Corporations Law.

5.2 FUNCTIONS AND POWERS OF THE BOARD

The Board would be an important channel for consultation with the business community. It would advise ASIC on PIP operations and the impact on business, particularly small business, of proposed changes in those operations. This would be particularly important over the next five years with the introduction of proposed Government and ASIC initiatives affecting the business community. These include the proposed ABN and ABR, the online BEP facility, and initiatives under the Corporate Law Economic Reform Program, including the implementation of CLERP 7 proposals in this paper.

Primarily, the Board would have an advisory role covering:

- The business environment surrounding PIP operations, including trends within, and needs of, business.
- Policy, strategic and marketing advice on PIP operations and initiatives.
- Goal and direction setting including PIP business plans.
- Performance feedback on PIP operations and on areas or opportunities for improvement.

- The impact on ASIC and business of ASIC or government strategies in relation to PIP.
- The impact of corporate law reform on PIP operations.

The Board would also:

- Communicate with business and industry organisations on proposed changes which are relevant to PIP operations.
- Report on Board activities in ASIC's annual report.

5.3 MEMBERSHIP OF THE BOARD

The Board would have between 8 and 10 members and be chaired by ASIC. ASIC would invite members to join the Board having regard to the nature of anticipated changes in PIP operations, and the knowledge and experience members would contribute in those areas.

The kinds of organisations from which membership would be sought include:

- Council of Small Business of Australia, or a small business association, or a chamber of commerce.
- Australian Institute of Company Directors.
- The electronic commerce industry.
- Professional accounting bodies.
- Law Council of Australia.
- Commonwealth Treasury and other relevant government departments or agencies.
- Other appropriate user groups.

PROPOSAL 3 — CREATION OF BUSINESS ADVISORY BOARD

- To ensure direct input from business on changes affecting them, a Business Advisory Board would be established to advise ASIC on the initiatives and operations of its PIP.
- The Advisory Board would be appointed and chaired by ASIC, with members drawn mainly from the business community and professional organisations.

PART 6: ABN AND ABR

6.1 INTRODUCTION

In August 1998, the Government announced proposals for a single business identifier, the ABN, and the establishment of an ABR as part of its tax reform package. Legislation — *A New Tax System (Australian Business Number) Act 1999* — was enacted in July 1999.

The ABN and ABR will contribute to the Government's objective of reducing compliance burdens on business, particularly small business. This unique business identifier for all Commonwealth purposes will assist business in meeting its regulatory and tax obligations and in accessing information and assistance through the BEP online facility.

- The BEP was established by the Commonwealth as an electronic gateway to enable business to access government bodies through a single Internet site rather than access each agency's site separately.

On 11 July 1999, the Minister for Communications, Information Technology and the Arts, the Minister for Employment, Workplace Relations and Small Business and the Assistant Treasurer, in a joint media release, announced that the Government would ensure that services to small business and e-commerce opportunities are boosted as part of tax reform implementation, including through the BEP facility. The Government is committed to providing all appropriate services online by 2001.

Government agencies, including ASIC, are working together to identify services and technologies to assist business in dealing with Government online. For example, proposals to use a digital certificate, linked to the ABN, are being developed to authenticate online transactions between Government and business conducted through the BEP gateway. By providing the necessary trust in the security of these transactions, this digital certificate could substantially boost the uptake of electronic commerce and online delivery of government services. ASIC would be expected to utilise the ABN linked certificate as part of a whole of government approach, as the Government has decided that all Commonwealth agencies will be required to use this certificate in their online dealings with business.

The development of facilities such as the BEP could eventually allow a business to change its details or provide information to government only once, with this information being shared electronically by a range of Commonwealth, State, Territory and local government agencies, generating efficiencies and savings for both business and government.

6.2 OPERATION OF THE ABN AND ABR

Business is often required under Commonwealth, State and Territory legislation to notify a number of agencies of the same (or variations of the same) information and events, in different ways, at different times and using different identification numbers.

To help overcome the burdens these requirements place on business, the Government has developed a unique business identifier, the ABN, for all government purposes (including GST registration).

The ABR will be a public register, managed by the Australian Taxation Office, which will record basic identifier information for each business such as name, type of entity, ABN, address for service of notices, principal place of business, e-mail address, and name of company public officer. (Not all of this information, however, will be freely available for public search.) The ABR is currently being built up, with the bulk of existing taxpaying business entities expected to have ABNs issued to them and recorded in the ABR by May 2000.

Once operational, the ABR will be able to be used by all Commonwealth Government agencies. By updating its ABR information online through the BEP facility, through the ABR, or through one of the participating agencies, a business will automatically update this information on registers held by all the Government agencies it deals with. Non-ABR information required to be notified to agencies will continue to be advised to the agency concerned.

6.3 POSSIBLE AMENDMENTS TO THE CORPORATIONS LAW

The ABN and ABR will not replace the existing registration and regulatory requirements under the Corporations Law. ASIC will continue to be the regulator responsible for registering companies and administering the Corporations Law.

However, companies will be able to advise a change in their ABR details only once, to either the ABR or directly to ASIC, with the change being automatically shared, as applicable, with ASIC and other Commonwealth agencies.

Companies will continue to deal direct with ASIC in relation to non-ABR information required under the Corporations Law, facilitated by the BEP where companies have online access and wish to use that channel.

Over time, companies registered under the Corporations Law that are carrying on a business as defined by the taxation laws will be allocated an ABN to replace the existing ACN. The existing Corporations Law requirement that a company show its ACN on public documents would therefore need to be amended. (Transitional arrangements could allow a period for existing stationery supplies to be utilised.)

Other Corporations Law amendments may be required to:

- rationalise provisions in the Corporations Law and in taxation and other laws which specify the company officers (directors, secretaries, public officers etc) authorised to notify changes or events, and the means by which this notification may legally be effected;
- rationalise notification periods for changes in particulars and penalties for late notification. Under the Corporations Law most notifications are required within 14 days while other laws may specify different periods. The Corporations Law imposes fee penalties for the late notification of a change while other laws may impose different fees; and
- harmonise some definitions used in various laws (for example, of principal place of business).

Further details of the operation of the ABN, ABR and the associated digital certificate infrastructure will be announced by the Government as they are settled. ASIC will then be able to assess their full effect on the implementation of system changes underlying the CLERP 7 proposals. Any resulting changes will be developed in the context of the continuing goal of reducing business compliance burdens.

PART 7: CORPORATIONS LAW FEES

This Part examines the options available to the Government for reducing the complexity of existing fee arrangements.

A number of changes to the fees regime are also proposed to ensure that it:

- operates in an efficient, effective, and equitable manner;
- facilitates the administration of the Corporations Law, including the changes to document lodgment requirements proposed elsewhere in this paper; and
- provides sufficient flexibility to facilitate future regulatory reforms.

7.1 WHY HAVE FEES?

A frequently raised question in relation to the fees regime is: 'Why do we need to have corporations fees?'

Successive governments have taken the view that the basic level of corporations fees should be set to ensure that, over time, total revenue from corporations fees approximates the total costs and outlays associated with the national corporate regulation scheme.

The rationale for this is that, because the national scheme provides general benefits to all companies and all market participants, its costs should be borne either directly or indirectly by all companies and market participants rather than through public funding by taxpayers.

7.2 EXISTING FEES REGIME

7.2.1 Legislative Framework

The existing corporations fees regime is document based, with the requirement to pay a fee generally being triggered lodging a document with, or submitting an application to, ASIC.

The legislative provisions dealing with the fees that may be prescribed for the purposes of the Corporations Law are sections 22, 25, 26 and 33 of the *Corporations Act 1989* and sections 1351 to 1362 of the Corporations Law. A summary of these provisions is provided at **Appendix A**.

The Corporations (Fees) Regulations set out the fees that are currently prescribed. The full schedule of fees is at **Appendix B**.

7.2.2 Setting the Quantum of Fees

Following the establishment of the national 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) and make a contribution towards other outlays and compensation payments associated with the scheme.

In 1994, this approach was modified with the objective of ensuring that, over a period of years, total fee revenue would equal total costs for that period. To give effect to this decision, the corporations fees that applied from 1 July 1994 were set at a level at which it was envisaged total fees revenue would, over time, equal total costs.

In 1995, the then Government decided that there should be a series of supplementary fee increases¹ with the objective of ensuring that, by 1998-99, the gap between revenue and total costs would have been eliminated. Because of subsequent changes in the level of business activity, including an increase in the number of new companies being registered each year and a consequential increase in the total company population, revenue marginally exceeded costs for the first time in 1996-97.

During the period 1991-92 to 1995-96, the national scheme incurred deficits totalling \$217.6 million. However, as a result of surpluses achieved since 1996-97, it is envisaged that the accumulated deficit will be eliminated in 2000-01.

¹ The supplementary increases were expected to generate additional revenue of \$10 million in 1995-96; \$12.9 million in 1996-97; \$15.3 million in 1997-98 and \$17.4 million in 1998-99. The increase that had to be made to the base fees to achieve these revenue targets was calculated as a percentage of \$250 million (which approximated 1994-95 fees revenue).

7.3 FEES REGIMES IN OTHER JURISDICTIONS

Australia's fees regime is not unique. Many overseas jurisdictions (and, in particular, those whose corporate legislation was originally modelled on the requirements of the United Kingdom) have fees requirements similar to Australia's. As a generalisation, fees are payable for:

- the registration or incorporation of a company;
- lodging annual returns;
- making applications to the regulatory body; and
- searching records maintained by the regulatory body.

In addition, many overseas jurisdictions impose penalty fees for the late lodgment of documents that are required to be lodged within a specified period.

Overseas jurisdictions also impose fees for takeover and fundraising matters and for activities associated with the regulation of their futures and securities industries.

Few meaningful conclusions can be drawn from either the quantum of fees in overseas jurisdictions (some appear high by Australian standards, others low) or the relationship between the various fees (for example, registration fees and annual fees). In most instances, the quantum of fees reflects each jurisdiction's views about matters such as the recovery of costs associated with the regulatory activity, the application of user pays principles for various transactions, and the extent to which the fees regime should be used as a mechanism to encourage business activity.

7.4 PRINCIPLES OF SETTING FEES

The principles that have been used for undertaking this review of corporations fees are:

- cost recovery;
- equity; and
- simplicity.

It is recognised that the interaction of these principles may introduce conflict in particular cases and that, in such cases, there may be a need to give more weight to one principle than to the others.

7.4.1 Cost recovery

The national scheme costs that have to be covered by revenue include:

- the costs incurred by ASIC;
- compensation payments to the States and the Northern Territory for corporations revenue forgone as a result of the establishment of the national scheme;
- the costs of other bodies forming part of the national scheme, including the Australian Accounting Standards Board, the Companies Auditors and Liquidators Disciplinary Board, the Companies and Securities Advisory Committee and the Corporations and Securities Panel; and
- national scheme related costs of bodies that, while not part of the national scheme, perform functions arising out of the administration and regulation of the scheme (for example, the Administrative Appeals Tribunal, the Australian Federal Police, the Director of Public Prosecutions and the Federal Court).

The annual return fee has been set at a level significantly higher than the direct cost of receiving and processing annual returns in order to recover other costs associated with the administration of the national scheme. These costs — for example, for surveillance, enforcement and prosecution — are equally incurred in providing a system which generates the benefits of an effective regulatory environment for all market participants.

Notwithstanding this cost recovery objective for fees in aggregate, there can be valid reasons why individual fees for specific regulatory activities should not represent full cost recovery for that activity. Examples of specific exceptions to the cost recovery principle include:

- reduced incorporation or annual return fees for charitable, professional, sporting and recreational bodies and for other special purpose entities; and

- providing the media² with information either free or at a concessional rate in the belief that the dissemination of this information will assist the legislative objectives of fully informed markets and timely public access to company information.

7.4.2 Equity

General benefits are enjoyed by all companies through incorporation and by all market participants when it is known that these markets are well regulated, transparent and operate with certainty.

Specific benefits are also enjoyed by some market participants (for example, occupational licence holders) through the operation of the Corporations Law.

In these circumstances, it may be argued that fees should be set at a level incorporating a measure of both the general and specific benefits available to the applicant.

For example, persons applying for, or holding, licences under the Corporations Law which enable them to secure remuneration should pay the full costs involved in processing the application and associated annual returns (as a measure of the specific benefit) as well as contributing to the costs involved in ASIC licensee surveillance and investigation activities (as a measure of the general benefit).

7.4.3 Simplicity

The ideal fees structure should:

- facilitate ASIC administration by minimising the number of separate fees in order to reduce the number of separate transactions for which billing information must be calculated and recorded; and
- be readily understood by lodgers of documents and by information searchers.

A measure of simplicity is the degree to which the rationale for each fee and for the fees structure as a whole can be easily understood by lodgers of documents and by information searchers.

² The Australian Bureau of Statistics is also provided with free access to information to facilitate the gathering of statistical data.

A simple fees structure should also facilitate any changes which may be required from time to time as market, legislative, technological and other conditions determine.

7.5 NEW ANNUAL FEES REGIME

For many years, fees for companies and occupational licence holders have been calculated in different ways:

- in the case of a company, on an annual basis payable as a lodgment fee for the company's annual return; and
- in the case of a licence holder, on the basis of each document lodged with ASIC.

This paper proposes the adoption of a uniform approach for the fees payable by both companies and occupational licence holders.

7.5.1 Companies

Fees for lodging company annual returns have traditionally been based on the type of company to which the return relates, with higher fees being set for public companies and lower fees for proprietary companies.

The rationale for this approach was that public companies were economically more significant than proprietary companies and, as a consequence, required a higher level of surveillance and supervision by the regulatory body. In addition, following the abolition of fees on a wide range of company documents, a higher fee for public companies was regarded as necessary to cover the costs associated with processing notices of change and other documents that such companies would lodge with the regulatory body.

Because of ongoing changes to the corporate and business environment, it is appropriate to reconsider the rationale for setting different fees for public and proprietary companies. For example:

- of the 18,000 public companies in Australia, less than 2,000 have shares or other securities listed on the Australian Stock Exchange (ASX);
- almost half the public companies are companies whose members' liability is limited by guarantee, suggesting that most have been

formed for social or recreational purposes (in which case they may qualify for reduced annual return fees on the grounds that they are 'special purpose companies'); and

- more than 500 proprietary companies are classified as disclosing entities because some of their securities are classified as ED ('enhanced disclosure') securities for the purposes of the Corporations Law.

In these circumstances, consideration was given to whether the new annual fees for companies should be determined according to whether or not the entity is a disclosing entity on the grounds that such an approach would more accurately reflect the level of public interest in an entity.

The disclosing entity concept was included in the Corporations Law in 1994 in conjunction with a series of amendments that imposed enhanced disclosure requirements on companies and other entities in which members of the public invest to enable informed decisions to be made about the allocation of investment funds.

While the adoption of a fees regime based on whether an entity is a disclosing entity could be expected to reduce the annual cost burden for those public companies that are no longer, or have never been, listed corporations, the change would result in lower annual fees for many relatively large public companies. Such an approach would be inequitable to small proprietary companies that would be paying the same annual fee as the public company.

An alternative approach, under which different fees would be prescribed for listed corporations, other public companies, large proprietary companies, small proprietary companies and special purpose companies ('the five-tier approach'), was also considered. A similar approach to the five-tier approach was used during the early 1990s for setting company annual return fees. While this approach would be more equitable than either a disclosing entity approach or the current arrangement, it lacks the simplicity of those approaches.

Both the disclosing entity approach and the five-tier approach would, in the absence of an annual return, be difficult to administer. Indeed, to facilitate the operation of these approaches, it would be necessary to impose new obligations for companies to advise ASIC of their status. The imposition of such an obligation would be inconsistent with the Government's objective of reducing compliance burdens.

On balance, it is proposed that annual fees for companies should be determined on the same basis as annual return lodgment fees are currently determined — that is, on the basis of whether a company is a public company or a proprietary company.

It is also proposed that:

- those public and proprietary companies that are currently treated as 'special purpose companies' for the purpose of assessing the fees payable on their annual returns would continue to receive the benefit of very low annual fees; and
- the small number of public companies that operate as strata title companies should be brought within the scope of the 'special purpose company' fees regime.

7.5.2 Occupational Licence Holders

Experience suggests that the arrangement under which companies effectively pay an annual fee at the time they lodge their annual return has worked well and, accordingly, it is proposed that a similar arrangement should be put in place for holders of occupational licences. Currently, such licence holders incur fees for:

- their annual statement;
- other documents that have to be lodged with their annual statement; and
- other notices that have to be lodged with ASIC (for example, details of representatives).

The quantum of the annual fee that should be levied for occupational licence holders is considered in the following section.

In conjunction with a move to having one annual fee for occupational licence holders, it is also proposed that the requirement to pay the fee should be separated from the obligation to lodge an annual statement. Such a move would be in keeping with the changes to company fees proposed earlier in this paper in conjunction with changes to company document lodgment requirements.

7.6 FEES PAID BY SMALL BUSINESS

It is proposed that the annual fee for proprietary companies be set at \$200, the same as the existing annual return fee. Had fees been adjusted in 1999-2000 for CPI movements, the present fee would have been \$210.

It is also proposed that the annual fee for proprietary companies be capped at \$200 for a period of three years.

A number of other changes proposed in this paper will also reduce the fees burden on small businesses. These measures include:

- changes to occupational licensing fees which, on the basis of current fees, will reduce the fees paid by the smallest businesses by almost \$60 a year (Part 7.7.1); and
- changes to fees for searching information maintained on ASIC's database will result in a reduction in the fees currently payable for searching longer documents and can be expected to benefit firms that undertake such searching as part of their normal business activities.

7.7 ACTIVITY-BASED FEES

There are three groups of corporations fees which require review having regard to the economic or other benefits received from the activities to which the fees relate. They are:

- occupational licensing for the futures and securities industries;
- fundraising; and
- takeovers.

7.7.1 Occupational licensing for the futures and securities industries

The regulations currently prescribe fees for both the registration and supervision of occupational licence holders who are dealers, investment advisers, futures brokers or futures advisers. These fees may be summarised as follows:

Matter	Natural person \$	Body corporate \$
Application for a licence	290	460
Annual statement	115	290
Other documents	29	29

Significant changes have been proposed in the area of occupational licensing. The consultative paper on implementing CLERP 6 ('Financial Products, Service Providers and Markets — An Integrated Framework') has outlined proposals for a single licensing regime³ to replace current licensing requirements in the:

- Corporations Law (applying to securities dealers, investment advisers, futures brokers and futures advisers, and their proper authority holders);
- *Insurance (Agents and Brokers) Act 1984* (providing for the registration of general insurance and life insurance brokers and the regulation of insurance agents); and
- Banking (Foreign Exchange) Regulations (applying to foreign exchange dealers).

In addition, on 3 August 1999, the Minister for Financial Services and Regulation announced a review of financial sector levies. Like the CLERP 6 proposals, the review of levies has significant implications for licence holders.

The following proposals are intended to apply to either the existing licensing regime or the revised regime forming part of the CLERP 6 proposals. However, as the CLERP 6 reforms are still being settled, it may be necessary for the fees proposals for occupational licence holders to be reviewed once the legislation to implement the reforms has been enacted.

There are a number of ways in which the fees for occupational licence holders could be calculated:

- on a flat-rate basis, with different levels of fees for companies and individuals (that is, the present basis);
- on a sliding-scale basis, with the quantum of the fee being determined by either:
 - the number of representatives appointed by the licence holder;
 - the turnover of the business to which the licence holder's licence relates; or
 - the net assets of the licence holder.

³ Under the CLERP 6 proposal, occupational licence holders will be known as 'Financial Service Providers'.

For companies in particular, Australia's current flat-rate fee is probably the least equitable of the methods listed above. The same fee would be payable by both a small family company with only one or two representatives and a public company with many representatives.

Each of the sliding-scale methods of determining fees for occupational licence holders has its merits.

However, the use of the number of representatives would have administrative advantages as licence holders currently lodge this information with ASIC and it would be readily available for the purposes of preparing invoices for payment of Annual Fees.⁴

A possible method for determining fees on the basis of the number of representatives is set out in Table 7.1.

Table 7.1: Illustrative example of fees for occupational licence holders based on number of representatives

No. of representatives	Natural persons \$	Bodies corporate \$
no representatives	120	-
not more than 2	300	300
3 to 10	720	720
11 to 50	1,200	1,200
more than 50	1,800	1,800

It is proposed that the fees for occupational licence holders should be changed from the current flat-rate basis to one based on the number of representatives. The quantum of these fees should be the subject of ongoing review to ensure that the cost of regulating licence holders is recouped from the fees.

In keeping with the undertaking given in the consultative paper on implementing CLERP 6, the fees prescribed in the Corporations (Fees) Regulations for occupational licence holders will not apply to those licence holders who are subject to fees under the *Financial Institutions Levies Collection Act 1998*.

4 While financial information is lodged with ASIC, it is not stored in a form suitable for preparing invoices for annual fees.

7.7.2 Fundraising

The current fees regime provides for a fee of \$1,730 for lodging a prospectus. In addition, fees are prescribed for lodging notices under section 1043B: \$1,730 in the case of a notice relating to the sale of shares under subsection 1043C and \$200 for a notice relating to the sale of shares or other securities under section 1043D.

The *Corporate Law Economic Reform Program Act 1999* (the CLERP Act) makes a number of significant changes to the fundraising provisions in the Corporations Law. From a fees perspective, the most important changes are:

- allowing issuers to raise up to \$2 million each year from up to 20 persons without issuing a prospectus or other disclosure document;
- allowing issuers to raise up to \$5 million under an offer information statement rather than a full prospectus;
- allowing the issue of a short-form prospectus in lieu of a standard full-disclosure document; and
- allowing the issue of a profile statement in lieu of a prospectus.

The appropriate quantum of fees for fundraising activities has been considered a number of times since the mid-1980s. The Ministerial Council for Companies and Securities decided that, effective 1 July 1987, the fees for lodging a prospectus should be \$1,000 plus a further \$150 for each participating State or Territory in which the prospectus was circulated. As a consequence, it cost more than \$2,000 to lodge a prospectus to be circulated in all States and Territories.

With the introduction of the national scheme in 1991, the fee for prospectuses was set at \$1,000. It was recognised, however, that this level of fee failed to cover the regulatory costs associated with the registration of prospectuses. Accordingly, the fee was increased to \$1,150 in 1992 and to \$1,500 in 1994. Since 1994, the fees have been increased in line with changes in the CPI and the four supplementary increases determined by the Government.

Information provided by ASIC indicates that the existing fees regime for fundraising activities fails to cover the regulatory costs associated with those activities. In 1998-99, fees in respect of fundraising activities covered approximately 35 per cent of the cost of regulating those activities.

Options for increasing fees revenue from fundraising activities include:

- retaining a flat-rate fee structure, but with a significant increase in the quantum of fees;
- introducing a differential fee scale, under which different fees are set for different types of disclosure document; or
- introducing a sliding-scale fee structure, under which the quantum of the fee is determined by the maximum amount that may be raised under the prospectus.

Both a flat-rate structure and a differential fee scale would be administratively simple, with the use of a differential fee scale being of particular benefit to those entities seeking to raise less than \$5 million through the use of an offer information statement.

A sliding-scale fee structure would be more equitable to most businesses as it would more closely relate the fee to the amount being raised. However, it could be administratively difficult.

On balance, it is proposed that a differential fee scale based on the type of disclosure document should be introduced.

It is envisaged that the fees for disclosure documents would be \$1,730 for an offer information statement and a profile statement and \$4,000 for both a short-form prospectus and a full-disclosure document. It is envisaged that, on the basis of activity levels in 1998-99, fees set at these amounts would cover approximately 60 per cent of the cost of regulating those activities.

However, fees for prospectuses should be monitored on an ongoing basis with a view to ensuring that they are progressively increased to a level that ensures recovery of the full amount of regulatory costs.

7.7.3 Takeovers

The current fees regime provides for a fee of \$1,730 for lodging a copy of a Part A statement and a fee of \$870 for lodging either a Part C statement or a notice varying a takeover offer (referred to as a section 657 notice).

The CLERP Act makes significant amendments to the takeover provisions in the Corporations Law, including:

- modifying the compulsory acquisition rules;

- improving resolution of takeover disputes by reforming the Corporations and Securities Panel so that it, rather than the courts or the Administrative Appeals Tribunal, is the primary forum for resolving takeover matters; and
- streamlining the rules for off-market and market bids, including bringing together disclosure requirements into a bidder's statement and a target's statement.

The appropriate quantum of fees for acquisition of shares (takeover) activities has also been considered a number of times since the mid-1980s. The fee for lodging a Part A statement was increased to \$1,000 with effect from 1 July 1987 and was retained at that level following the introduction of the national scheme in 1991. However, it was recognised that this level of fee failed to cover the regulatory costs associated with takeover activities. Accordingly, the fee was increased to \$1,250 in 1992 and to \$1,500 in 1994. Since 1994, the fees have been increased in line with changes in the CPI and the four supplementary increases determined by the Government.

As with fees for fundraising activities, information provided by ASIC indicates that the existing fees regime for takeover activities fails to cover the regulatory costs associated with those activities. In 1998-99, fees in respect of takeover activities generated less than 10 per cent of the cost of regulating those activities.

Options for increasing fees revenue from takeover activities include:

- retaining a flat-rate fee structure, but with a significant increase in the quantum of fees; or
- introducing a sliding-scale fee structure, under which the quantum of the fee is determined by the total consideration offered in conjunction with the takeover offer.

On balance, this paper proposes the retention of a flat-rate fee structure on the basis that it would be less difficult to administer.

To ensure that a higher proportion of the costs associated with the regulation of takeover activities is recouped from entities making takeover bids, the fee should be increased to an amount in the order of \$4,000. However, in keeping with the objective of simplifying the fees schedule, there will no longer be a separate fee for other documents associated with the takeover (for example, a notice of variation of an off-market bid).

It is envisaged that, on the basis of activity levels in 1998-99, fees set at these levels would cover approximately 20 per cent of the cost of regulating these activities.

As a significant gap will still exist between fees for takeover activities and costs associated with those activities, these fees should be monitored on an ongoing basis with a view to ensuring that they are progressively increased to a level that ensures the full amount of regulatory costs are recovered.

7.8 A NEW FEES SCHEDULE

The existing fees schedule is a complex document containing 51 items grouped into 11 categories which are based on activity or type of transaction. This complexity is, in large part, a reflection of the wide range of matters dealt with in the Corporations Law.

The ultimate objective, in terms of simplicity, would be to have a fees schedule that prescribes one fee for each of the following matters:

- registration as a financial service provider,⁵ auditor or liquidator;
- registration of a company or other entity;
- annual fee for financial service providers, auditors and liquidators;
- annual fee for companies and other entities;
- fundraising;
- charges;
- matters concerning the licensing of financial product markets and clearing and settlement facilities;
- acquisition of shares;
- other applications (not covered by the above items);
- late lodgment;
- supply of information and documents; and
- other matters that ASIC is required or authorised to do.

While such a schedule could be prepared, its simplicity would almost certainly be at the expense of equity. For example, it would be difficult

⁵ The terminology used here is the same as that used in the CLERP 6 paper.

to justify a small not-for-profit company having to pay the same annual fee as a large listed corporation.

Nevertheless, if appropriate provision were made for cases where a single fee for a category of activity or transaction would be inequitable, a significant reduction in the size and complexity of the fees schedule could be achieved.

Some of the changes proposed to simplify the fees schedule are outlined in Table 7.2.

Table 7.2: Proposed Changes to Fees Schedule

Matter	Proposed change
Financial service providers — variation of licence conditions	The existing fees item deals only with the variation of a dealers licence to operate a managed investment scheme. It is proposed that the item should deal more generally with variation of licence conditions and provide differential fees for natural persons and bodies corporate.
Auditors and liquidators	It is proposed that there should be an annual fee for auditors and liquidators. This change would bring auditors and liquidators into line with the regime for other occupational licence holders. It also reflects the Audit Review Working Party's recommendation that the triennial statement should be replaced by an annual statement.
Companies limited by guarantee	As all States and Territories now have legislation for the incorporation of associations, there would no longer seem to be a need for a concessional registration fee for companies limited by guarantee.
Fees for charges rationalised	It is proposed that the fees for notices under sections 263 (creation of a charge) and 264 (acquisition of property subject to a charge) should be set at \$185. In conjunction with this change, it is proposed that the fees for the notice under section 268 (assignment and variation of charges) and the memorandum under subsection 269(2) (satisfaction of, and release of property from, charges) should be abolished.
Application fees broad-banded	It is proposed that applications that are currently subject to fees of \$290 and \$200 (see items 22 and 23 in Attachment B) be broad-banded with a fee of \$240. It is also proposed that applications that are currently subject to fees of \$60, \$35 and \$29 (items 25-27 in Attachment B) be broad-banded with a fee of \$60. A fee of \$60 is proposed on the grounds that it more adequately reflects the cost of processing minor applications.
Search fees	It is proposed that the differential fees for current and historical extracts and for the supply of documents of different sizes be abolished. The revised fees would be set at \$8 for an extract and \$16 for the supply of a document.
General document lodgment fee	It is proposed that the general fee for lodging documents under Chapter 5C, 7 or 8 be abolished. An allowance for these fees would be included in the annual fees.

A draft fees schedule, prepared in accordance with these objectives, and making provision for other changes proposed in this paper, is at **Appendix C**. In comparison with the present schedule which has 51 items, the draft schedule contains 32 items. In both cases, the items are grouped into 11 categories.

Alternative structures for the fees schedule are possible, and comments about the appropriateness of the draft schedule (especially in terms of whether it is easy to understand and use), along with details of any suggestions for change, are sought.

7.9 MECHANISM FOR REVIEWING THE QUANTUM OF FEES

The draft fees schedule at **Appendix C** sets out the quantum of fees that should apply from 1 July 2000. These fees, which are based on the fees introduced on 1 July 1994, reflect the anticipated change in the CPI between the December quarters of 1993 and 1999 and incorporate the four supplementary increases made in 1995-96 and subsequent years.

It is proposed that the fees as at 1 July 2000 should be used as the base for determining the quantum of fees in 2001-02 and subsequent years. The CPI for the December quarter of 1999 would be used as the base index figure.

The formula to be used for calculating the increase would be: the fees as at 1 July 2000 increased by the difference (expressed as a percentage) between the CPI:

- for the December quarter of 1999; and
- for the December quarter immediately preceding the financial year in which the revised fees would apply.

Fees calculated in accordance with this formula would then be rounded as follows:

- amounts below \$50 — to the nearest dollar;
- amounts from \$50 to \$200 — to the nearest \$5; and
- amounts above \$200 — to the nearest \$10.

The fees to apply in 2001-02 would, therefore, be determined by calculating the percentage change in the CPI between the December

quarters of 1999 and 2000 and increasing the 1 July 2000 fees by that percentage amount. Similarly, the fees for 2002-03 would be determined by increasing the 1 July 2000 fees by the percentage change in the CPI between the December quarters of 1999 and 2001.

An exception to this rule will be the Annual Fee for proprietary companies which, as mentioned above, will be capped at \$200 until 30 June 2003.

7.10 ENCOURAGING ELECTRONIC LODGMENT

As noted elsewhere in this paper, an increasing proportion of documents are lodged electronically with ASIC. The Government is keen to encourage this trend.

This review has considered whether greater use of electronic lodgment could be achieved through the use of financial incentives built into the fees schedule. This could be done by:

- reducing the lodgment fee where a document is provided to ASIC in electronic form; or
- reducing the annual fee where a payment is made to ASIC electronically; or
- imposing a supplementary fee where the document is lodged in paper form.

In view of the proposals outlined in this paper for the abolition of annual returns, and the fact that many documents either currently do not or, under the CLERP 7 proposals, will not have a lodgment fee, there is little scope for an incentive based on a reduction of the lodgment fee for documents that are lodged electronically.

However, a reduction for electronic payments could be considered at a later stage.

The imposition of a supplementary fee on paper documents, while practical, would raise issues of fairness. Some companies — for example, not-for-profit enterprises or enterprises in remote areas — may not have easy or low-cost access to EDGE or the internet. In general, one might expect smaller enterprises to be less likely to be on-line. Consequently, a supplementary fee may be open to the criticism that it imposes a regressive charge upon those companies least able to afford it.

On balance, it is proposed that no adjustments should be made to the fees schedule at this time to either further encourage electronic lodgment or to discourage paper lodgment.

7.11 LATE FEES REGIME

The Corporations Law provides, in most instances, that periodic returns and documents notifying changes in respect of companies and the holders of occupational licences must be lodged within a specified period after either the date to which the document is made up or the event being reported in the document.

If documents are not lodged within the specified period, late fees are payable when the document is lodged, irrespective of whether a fee is payable for lodging the document. At present, a late fee of \$60 must be paid where the document is lodged within one month after the specified period while a fee of \$230 is incurred when it is lodged more than one month after the specified period.

The objective of late fees is to encourage the timely lodgment of documents with ASIC so that its corporate database, which serves an important role by providing Australian market participants with information about the status of Australian companies, is accurate and up to date. The importance of late fees in encouraging compliance will be increased by proposals earlier in this paper for the abolition of company annual returns.

Nevertheless, the late fees regime is a source of some frustration to companies and their professional advisers. Experience indicates that many late lodgments occur as a result of inadvertence (for example, under-estimating the time needed to post documents to ASIC) or oversight (for example, newly appointed office holders who are unfamiliar with lodgment requirements).

Despite these concerns, the late fees regime remains an effective mechanism for encouraging the timely lodgment of documents and, in the absence of an equally effective alternative mechanism, it is proposed that it be retained.

7.12 LEGISLATIVE AMENDMENTS

To give effect to the proposals contained in this paper, certain changes are needed to the fees provisions in the Corporations Law.

The most significant amendment is to the definition of ‘chargeable matter’ in section 9, which will need to be revised to include annual fees for entities and occupational licence holders registered by ASIC.

In addition, the Corporations Law will need to be amended to provide when annual fees are payable. It is envisaged that this would be on the anniversary of registration, although provision would be made for the fee to be paid on an alternative date where ASIC agrees (for example, so that the fees for all companies in a group of companies can be paid on the same day).

In conjunction with the above amendments to the Corporations Law, it is proposed that a number of other changes be made to the *Corporations Act 1989* and the Corporations Law to facilitate the operation of the fees provisions for the foreseeable future. These changes include:

- amending subsection 26(2) of the Corporations Act to increase the maximum amount of a fee prescribed as a stated amount from \$5,000 to \$10,000;
- amending subsection 1352(1) of the Corporations Law to increase the aggregate amount of the fees payable for a chargeable matter from \$25,000 to \$50,000;
- giving ASIC the authority to include, in any invoice that it may issue in connection with the payment of an annual fee, amounts shown on a previous invoice that have not been paid;
- providing power to prescribe fees of different quantum where documents are lodged electronically, fees are paid electronically, or both; and
- ensuring that there is power to enable a penalty fee to be imposed where an annual payment is not made by the due date.

The proposed amendments of the monetary amounts referred to in subsection 26(2) of the Act and subsection 1352(1) of the Corporations Law reflect the fact that, even with small adjustments based on changes to the CPI, fees will ultimately reach the \$5,000 limit prescribed in subsection 26(2). The sole intention of the proposed change to the aggregate amount of the fees payable for a chargeable matter is to maintain the relativity between the two limits.

PROPOSAL NO. 4: OVERHAUL OF CORPORATIONS LAW FEES

- An Annual Fee for companies would be introduced in conjunction with the abolition of the requirement to lodge annual returns, replacing the existing annual return fee.
 - The Annual Fee for proprietary companies would be set at \$200 (the amount of the present annual return fee) and be capped at that level for 3 years.
 - Public companies that operate solely as strata title companies would be brought within the definition of ‘special purpose companies’.
- Occupational licence holders would pay an Annual Fee rather than a fee for each document lodged with ASIC.
 - Fees for licence holders would be calculated on a sliding scale according to the number of representatives the licence holder has.
- Fees for prospectuses would be changed to a differential scale according to the type of disclosure document — \$1,800 for an offer information statement and profile statement and \$4,000 for a short-form or full-disclosure prospectus.
- The existing flat-rate fee structure for lodging takeover documents would be retained, but the amount of the fee would be set at \$4,000.
- Fees for occupational licence holders, fundraising and takeover activities would continue to be monitored with a view to ensuring that they are progressively increased to a level that fully covers regulatory costs.
- The existing late fee regime, which depends on whether documents are lodged more or less than one month late, would be retained.
- The late fee regime would also apply to late payment of annual fees.
- The schedule of fees payable by companies would be simplified, with the number of items reduced from 51 to about 30.
- The fees to apply in 2001-02 and later years would be based on the fees proposed to apply from 1 July 2000 with an appropriate adjustment to reflect movements in the CPI (except that the Annual Fee for proprietary companies would be capped at \$200 until 30 June 2003).

APPENDIX A: LEGISLATIVE PROVISIONS UNDERPINNING THE FEES REGIME

The legislative provisions that relate to fees that may be prescribed for the purposes of the Corporations Law are sections 22, 25, 26 and 33 of the *Corporations Act 1989* and sections 1351 to 1362 of the Corporations Law.

FEES TO BE IN REGULATIONS

Section 22 of the Corporations Act empowers the Governor-General to make regulations not inconsistent with the Corporations Act or the Corporations Law prescribing all matters required or permitted by the Corporations Law to be prescribed by the regulations or necessary or convenient to be prescribed by regulations for carrying out or giving effect to the Corporations Law.

Section 25 of the Corporations Act provides that the regulations may prescribe fees (including fees that are taxes) for chargeable matters.

Section 33 of the Corporations Act imposes the fees (including fees that are taxes) that are prescribed in the Corporations (Fees) Regulations. These Regulations include the schedule of fees (reproduced in Appendix B) under review in this paper.

CHARGEABLE MATTERS

Chargeable matters are defined in section 9 of the Corporations Law as:

- (a) the lodgment of a document;
- (b) the registration of a document;
- (c) the inspection or search of a register kept by, or a document in the custody of, ASIC;
- (d) the making available by ASIC of information;

- (e) the production by ASIC, under a subpoena, of such a register or document;
- (f) the issuing of a document or a copy of a document, the granting of a licence, consent or approval, or the doing of any other act by the Minister or ASIC;
- (g) the making of an inquiry of, or an application to, the Minister, or ASIC, in relation to a matter;
- (h) the submission to ASIC of a document for examination.

LIMIT ON SIZE OF FEES

Subsection 26(2) of the Corporations Act provides that where a fee is prescribed as a stated amount that amount is not to exceed \$5,000 while subsection 26(3) of the Corporations Act provides that two or more fees may be prescribed for the same chargeable matter. Subsection 1352(1) of the Corporations Law adds the further proviso that the upper limit on the aggregate amount of fees payable for a chargeable matter is \$25,000.

PAYMENT OF FEES

Section 1351 of the Corporations Law provides that where a fee is prescribed for a chargeable matter and the fee is imposed by an Act, the fee must be paid to the Commonwealth.

As a general rule, fees are paid at the time documents and applications are submitted to ASIC. Subsection 1354(2) of the Corporations Law does, however, provide that documents submitted for lodgment without payment of the correct fee are to be accepted and that the outstanding fee becomes a debt payable to the Commonwealth (subsection 1354(3)). These provisions reflect the policy view that a high priority should be given to processing documents lodged with ASIC, so that the information contained in them is available as soon as possible for access by the public.

OTHER FEES PROVISIONS

In addition to the fees provisions outlined above, there are several provisions that are intended to provide flexibility in the operation of the fees regime. They are:

- (a) section 26(1) of the Corporations Act, which permits fees for a transaction to be determined by reference to a prescribed matter or prescribed matters (for example, the value of the shares or debentures being offered in a prospectus or the ASX listing fee) whether or not that matter or those matters had a direct or indirect connection with the transaction; and
- (b) sections 1357 and 1358 of the Corporations Law, which provide for the payment of a deposit where the fee for a transaction could not be determined at the time the Minister or ASIC was required to do an act in connection with that matter.

APPENDIX B: CORPORATIONS LAW FEES

This Appendix lists the items for which fees are currently prescribed. The quantum of these fees was last revised on 1 August 1997.

<i>Item</i>	<i>Description</i>	<i>Fee (\$)</i>
Occupational licensing		
1	On application under subsection 782(1) for a dealers licence or an investment advisers licence or under subsection 1144(1) for a futures brokers licence or a futures advisers licence:	
	(a) by a body corporate	460
	(b) by a natural person	290
1A	On application for variation of a dealers licence to authorise the licensee to operate a managed investment scheme or managed investment schemes of a particular kind.	230
2	On lodging a statement under section 791 or 1157(1):	
	(a) by a body corporate that holds a dealers licence, an investment advisers licence, a futures brokers licence or a futures advisers licence	290
	(b) by a natural person who holds a dealers licence, an investment advisers licence, a futures brokers licence or a futures advisers licence	115
3	On application under Part 9.2 for registration as:	
	(a) an auditor	290
	(b) an official liquidator	290
	(c) a liquidator, except a liquidator referred to in paragraph (d)	290
	(d) a liquidator of a specified body corporate	60
4	On lodging a statement under section 1288	115

Incorporation and Registration of companies and other bodies

5	On application for:	
	(a) registration of a company under section 118:	
	(i) if the company has a share capital	690
	(ii) if the company does not have a share capital	290
	(b) registration of a company under section 601BD:	
	(i) if, at the time of lodging the application, the body corporate was registered under Division 2 of Part 5B.2	290
	(ii) in any other case	690
	(c) transfer of the registration of a company under section 1362B	750
6	On lodging the documents under Part 5B.2 for the registration of:	
	(a) a registrable Australian corporation:	
	(i) if, in its place of origin, it is incorporated or registered under a law dealing with the incorporation of associations	290
	(ii) if, in its place of origin, it is incorporated or registered under a law except a law dealing with the incorporation of associations	690
	(b) a foreign company	690
6A	On application under section 601EA for registration of a managed investment scheme:	
	(a) if the application relates to prescribed interests to which section 1452 applies	870
	(b) if paragraph (a) does not apply	1730

Annual returns and accounts

7	On lodging the annual return, except a return to which item 7A or 7B applies, of:	
	(a) a public company, except a special purpose company	870
	(b) a proprietary company, except a special purpose company	200
	(c) a special purpose company	35
	(d) a registered scheme	870
7A	On lodging the annual return of a proprietary company that was registered during the period commencing on 1 July and ending at the end of 31 December in a year, if the annual return is for the calendar year in which the company was registered	no fee
7B	On lodging the annual return of a proprietary company if:	
	(a) the company was registered during the period commencing on 1 January 1995 and ending at the end of 30 June 1995; and	
	(b) the first financial year of the company ends after 30 June 1995; and	
	(c) the annual return is for the calendar year in which the company was registered	no fee
8	On lodging the first annual return of a company registered under section 118 after the company has ceased to act solely as the trustee of a regulated superannuation fund within the meaning of section 19 of the Superannuation Industry (Supervision) Act 1993, in addition to the fee payable under paragraph 7(a) or 7(b):	
	(a) if the application to register the company was lodged on or after 11 March 1994 and before 1 April 1995	580
	(b) in any other case	no fee
9	On lodging an annual return or balance sheet and profit and loss account of a registered foreign company under section 601CK	870
9A	On lodging a report under section 319:	
	(a) by a disclosing entity, except a company or a registered scheme	870

9B	On lodging a report under section 320	no fee
9C	Omitted	
9D	On lodging, by a manager, a management company return under subsection 1071(1) relating to a disclosing entity	115
9E	On lodging, by a manager, accounts and other documents referred to in subsection 323K(1) relating to a disclosing entity	no fee
Fundraising		
10	On lodging:	
	(a) a prospectus under section 1018	1730
	(b) a supplementary or replacement prospectus under section 1023B or 1024	no fee
10A	On lodging a notice under section 1043B:	
	(a) relating to the sale of shares under section 1043C	1730
	(b) relating to the sale of other securities under section 1043D	200
11-12	Omitted	
Charges		
13	On lodging a notice under section 263 or 264	115
14	On lodging a notice under section 268 or a memorandum under subsection 269(2)	60
Futures and Securities Industry bodies		
15	On application for:	
	(a) a declaration under subsection 771(1) by the Minister that a specified stock market is an exempt stock market; or	
	(b) a declaration under subsection 1127(1) by the Minister that a specified futures market, or a futures market included in a specified class of futures markets, is an exempt futures market	1150

16	On lodging an application for approval of a body corporate as:	
	(a) a stock exchange; or	
	(aa) a securities clearing house; or	
	(b) an approved securities organisation; or	
	(c) a futures exchange; or	
	(d) a futures clearing house; or	
	(e) a futures association	1150
16A	On lodging an application for approval of a section 770A stock market	1150
17	On giving notice:	
	(aaa) under paragraph 774(1)(a), as applied by subregulation 7.3.17(2) of the Corporations Regulations, of an amendment, or amendments, to the business rules of a management company in relation to unquoted prescribed interests; or	
	(a) under subsection 774(1) of an amendment, or amendments, of the business rules or listing rules of a securities exchange; or	
	(aa) under subsection 779C(1), of an amendment, or amendments, of the business rules of a securities clearing house; or	
	(b) under subsection 928(1) of an amendment, or amendments, of the business rules of a body corporate in relation to which a nomination as the Securities Exchange Guarantee Corporation is in force under subsection 67(1) of the Act; or	
	(c) under subsection 1136(1) of an amendment, or amendments, of the business rules of a futures exchange, futures clearing house or futures association	115
17A	On lodging, by a securities exchange, a statement referred to in subsection 776(2A) relating to contraventions of the exchange's business rules or listing rules, or of the Corporations Law	no fee
Acquisition of shares		
18	On lodging a copy of a Part A statement and a copy of a proposed offer to which the Part A statement relates, for registration under subsection 644(1)	1730

19	On lodging a copy of a notice under section 657 for registration under subsection 659(1)	870
20	On lodging a Part C statement under subparagraph 679(1)(a)(iii)	870
	Other applications	
21	Omitted	
22	On lodging an application:	
	(a) for the consent of the Minister under subsection 147(2) or 601DC(2) to the use of a name by a corporation or proposed corporation; or	
	(b) under section 601QA, 728, 730 or 1084	290
23	On lodging an application:	
	(a) for ASIC to exercise a power under section 601AE or 601AF; or	
	(b) under Chapter 6 for which a fee is not provided by any other item	200
24	On application:	
	(a) under section 111AT, paragraph 157(1)(b) or section 340; or	
	(b) for the exercise by ASIC of its power under subsection 150(1)	115
25	On application:	
	(a) under subsection 163(1); or	
	(b) under Chapter 5C or Part 7.12 for which a fee is not provided by any other item	60
26	On lodging an application for the reservation of a name or for the extension of a reservation of a name	35
27	On lodging an application for which a fee is not provided by any other item	29

Late lodgment

- 28 On the late lodgment of a document (in addition to any fee provided by any other item for the lodgment of that document):
- (a) if lodged within one month after the prescribed time 60
 - (b) if lodged more than one month after the prescribed time 230

Supply of information and documents

- 29 For a document issued or displayed by ASIC containing information relating to a single corporation or registered scheme, if the information is retrieved using a computer system:
- (a) if requested by or on behalf of the Australian Broadcasting Corporation, the Special Broadcasting Service, the Australian Bureau of Statistics, the holder of a licence for a commercial broadcasting or television station or the proprietor or publisher of a newspaper generally available to the public otherwise than by subscription:
 - (i) if the document contains only current information no fee
 - (ii) if the document contains both current and non-current information 15
 - (b) in any other case:
 - (i) if the document contains only current information 8
 - (ii) if the document contains both current and non-current information 15
- 30 For inspecting, or an inquiry involving the inspection of, documents that are lodged by or in relation to a particular corporation or registered scheme:
- (a) where the documents are reproduced using a computer system:
 - (i) for less than 10 pages 15
 - (ii) for 10 pages or more 29
 - (b) in any other case 15

30A	For an electronic transmission notifying a change in the information relating to an entity, in addition to any fee payable under item 29 or paragraph 30(a)	8
31	For inspecting, or an enquiry involving an inspection of, the Register of Licence Holders, the Register of Futures Licensees, the Register of Auditors, the Register of Liquidators, or the Register of Official Liquidators:	
	(a) if requested by or on behalf of the Australian Broadcasting Corporation, the Special Broadcasting Service, the Australian Bureau of Statistics, the holder of a licence for a commercial broadcasting or television station or the proprietor or publisher of a newspaper generally available to the public otherwise than by subscription	no fee
	(b) in any other case	8
32	For inspecting, or an enquiry involving the inspection of, the Australian Register of Company Charges and documents lodged by a particular corporation and used by ASIC to compile or maintain that Register, where documents are reproduced using a computer system:	
	(a) for less than 10 pages	15
	(b) for 10 pages or more	29
33	For the issue of a document relating to recorded entries about a corporation or registered scheme, or a director or secretary of a company, on all registers maintained using a computer system:	
	(a) if requested by or on behalf of the Australian Broadcasting Corporation, the Special Broadcasting Service, the Australian Bureau of Statistics, the holder of a licence for a commercial broadcasting or television station or the proprietor or publisher of a newspaper generally available to the public otherwise than by subscription	no fee
	(b) in any other case	29
34	For a certificate issued by ASIC, except a certificate issued under:	
	(a) paragraph 118(1)(c), section 160, subsection 164(6), subsection 165(5), paragraph 601BD(1)(c), or subsection 601CU(1), 1280(5), 1282(6) or 1283(2); or	
	(b) regulation 10.1.07 of the Corporations Regulations	15

35	For supplying a certified copy of, or a certified copy of an extract from, a document filed or lodged with ASIC, in addition to the fee payable under item 30, 31 or 32	15
36	For the production by ASIC, pursuant to a subpoena, of a document in its custody	29
37	Where the inspection of a register or the issue or display of a document occurs at a Business Centre of ASIC, in addition to the fee payable under item 29, 30, 31, 32 or 33	2
	Other matters	
38	Omitted	
39	On lodging any document under Chapter 5C, 7 or 8, if no fee is prescribed in relation to the document in any other item, except where 'no fee' appears in column 3 of an item in relation to the document	29
40	For any act that ASIC is required or authorised to do on the request of a person, if no fee is prescribed in relation to the act, except:	
	(a) an act under section 601AE or 601AF; or	
	(b) where 'no fee' appears in column 3 of an item in relation to the act	29
41	For the preparation by ASIC of the statement referred to in paragraph 411(17)(b)	115
42	On submitting a proposed statement under subsection 412(1) to ASIC for examination	580
43	On lodging, by an unlisted disclosing entity, a document referred to in subsection 1001B(1) relating to price sensitive information	no fee

APPENDIX C: DRAFT FEES SCHEDULE WITH PROPOSED FEES FROM 1 JULY 2000

The schedule is included to illustrate the proposed changes in fee structure and facilitate discussion. The proposed fees, which are based on the fees introduced on 1 July 1994, reflect the anticipated change in the CPI between the December quarters of 1993 and 1999 and incorporate the four supplementary increases made in 1995-96 and subsequent years.

<i>Item</i>	<i>Description</i>	<i>Fee (\$)</i>
1	Registration of occupational licence holders	
	<i>The items for occupational licence holders will be revised when the legislation to implement the CLERP 6 proposals is enacted.</i>	
1.1	On application for a dealers licence, an investment advisers licence, a futures brokers licence or a futures advisers licence:	
	(a) by a body corporate	480
	(b) by a natural person	300
1.2	On application for a variation of the conditions of a dealers licence to authorise the licensee to operate a managed investment scheme or a managed investment scheme of a particular kind	300
1.3	On application under Part 9.2 for registration as an auditor, an official liquidator, a liquidator or a liquidator of a specified body corporate	300
2	Registration of companies and other entities	
2.1	On application for the registration of a company under section 118 or section 601BD or for the transfer of the registration of a company under section 1362B	720
2.2	On lodging the documents under Part 5B.2 for the registration of a registrable Australian corporation or a foreign company	720
2.3	On application under section 601EA for the registration of a managed investment scheme	1,800

3 Annual Fees

The item for occupational licence holders in the futures and securities industries will be revised when the legislation to implement the CLERP 6 proposals is enacted.

3.1	Annual fee for an entity that is:	
	(a) a public company (other than a public company that is a special purpose company) or a registered managed investment scheme	900
	(b) a proprietary company (other than a proprietary company that is a special purpose company)	200
		36
	(c) a special purpose company	900
	(d) a foreign company	
3.2	Annual fee for an occupational licence holder who is an auditor, a liquidator or a liquidator of a specified body	60
3.3	Annual fee for the holder of a dealers licence, an investment advisers licence, a futures brokers licence or a futures advisers licence:	
	(a) if a fee is payable under the <i>Financial Institutions Levies Collection Act 1998</i>	no fee
	(b) in any other case, where the licence holder is:	
	(i) a natural person with no representatives	120
	(ii) a body corporate or a natural person with:	
	(A) not more than 2 representatives	300
	(B) 3 to 10 representatives	720
	(C) 11 to 50 representatives	1,200
	(D) more than 50 representatives	1,800

4 Charges

4.1	On lodging a notice under section 263 or 264	185
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5 Fundraising

5.1 On lodging:

- (a) a disclosure document under section 718, where the document is:
 - (i) an offer information statement or a profile statement 1,800
 - (ii) a short form or full-disclosure prospectus 4,000
- (b) a supplementary or replacement disclosure document under section 719 no fee

6 Futures and Securities Industry Bodies

The CLERP 6 proposals deal with the licensing of financial product markets and clearing and settlement facilities and are expected to replace the existing provisions dealing with futures and securities industry bodies. As a consequence, both the terminology used in these items and the references to legislative provisions will need to be updated when the legislation to implement the CLERP 6 proposals has been enacted.

6.1 On application for:

- (a) a declaration under subsection 771(1) by the Minister that a specified stock market is an exempt stock market; or
- (b) a declaration under subsection 1127(1) by the Minister that a specified futures market, or a futures market included in a specified class of futures markets, is an exempt futures market 1,200

6.2	On lodging an application for approval of:	
	(a) a body corporate as:	
	(i) a stock exchange; or	
	(ii) a securities clearing house; or	
	(iii) an approved securities organisation; or	
	(iv) a futures exchange; or	
	(v) a futures clearing house; or	
	(vi) a futures association	
	(b) a section 770A stock market	1,200
6.3	On giving notice:	
	(a) under paragraph 774(1)(a), as applied by subregulation 7.3.17(2) of the Corporations Regulations, of an amendment, or amendments, to the business rules of a management company in relation to unquoted interests in a registered scheme; or	
	(b) under subsection 774(1) of an amendment, or amendments, of the business rules or listing rules of a securities exchange; or	
	(c) under subsection 779C(1), of an amendment, or amendments, of the business rules of a securities clearing house; or	
	(d) under subsection 928(1) of an amendment, or amendments, of the business rules of a body corporate in relation to which a nomination as the Securities Exchange Guarantee Corporation is in force under subsection 67(1) of the Act; or	
	(e) under subsection 1136(1) of an amendment, or amendments, of the business rules of a futures exchange, futures clearing house or futures association	120
7	Acquisition of shares	
7.1	On lodging a copy of a bidder's statement under section 633 or 635	4,000

8	Other applications	
8.1	On lodging an application:	
	(a) for the consent of the Minister under subsection 147(2) or 601DC(2) to the use of a name by a corporation or proposed corporation	
	(b) under section 260MA, 601QA, 655A, 669 or 741	
	(c) for ASIC to exercise a power under section 601AE or 601AF; or	
	(d) under Chapter 6, 6A, 6B or 6C for which a fee is not provided by any other item	240
8.2	On application:	
	(a) under section 111AT, paragraph 157(1)(b) or section 340; or	
	(b) for the exercise by ASIC of its power under subsection 150(1)	120
8.3	On application:	
	(a) under subsection 163(1);	
	(b) under Chapter 2L, 5C or 6D for which a fee is not provided by any other item;	
	(c) for the reservation of a name or for the extension of a reservation of a name; or	
	(d) for which a fee is not provided by any other item	60
9	Late lodgment	
9.1	On the late lodgment of a document (in addition to any fee provided for by any other item for the lodgment of that document) or the late payment of an annual fee:	
	(a) if lodged or paid within one month after the prescribed time	60
	(b) if lodged or paid more than one month after the prescribed time	240

10	Supply of information and documents	
10.1	For a document issued or displayed by ASIC containing information relating to a single corporation or registered scheme, if the information is retrieved using a computer system:	
	(a) if requested by or on behalf of the Australian Broadcasting Corporation, the Special Broadcasting Service, the Australian Bureau of Statistics, the holder of a licence for a commercial broadcasting or television station or the proprietor of a newspaper generally available to the public otherwise than by subscription	no fee
	(b) in any other case	8
10.2	For inspecting, or an enquiry involving the inspection of, documents that are lodged by or in relation to a particular corporation or registered scheme	16
10.3	For an electronic transmission notifying a change in the information relating to an entity, in addition to any fee payable under item 10.1 or 10.2	8
10.4	For inspecting, or an enquiry involving an inspection of, the Register of Licence Holders, the Register of Futures Licensees, the Register of Auditors, the Register of Liquidators, or the Register of Official Liquidators:	
	(a) if requested by or on behalf of the Australian Broadcasting Corporation, the Special Broadcasting Service, the Australian Bureau of Statistics, the holder of a licence for a commercial broadcasting or television station or the proprietor of a newspaper generally available to the public otherwise than by subscription	no fee
	(b) in any other case	8
10.5	For inspecting, or an enquiry involving the inspection of, the Australian Register of Company Charges and documents lodged by a particular corporation and used by ASIC to compile or maintain that Register, where documents are reproduced using a computer system	30

10.6	For the issue of a document relating to recorded entries about a corporation or registered scheme, or a director or secretary of a company, on all registers maintained using a computer system:	
	(a) if requested by or on behalf of the Australian Broadcasting Corporation, the Special Broadcasting Service, the Australian Bureau of Statistics, the holder of a licence for a commercial broadcasting or television station or the proprietor of a newspaper generally available to the public otherwise than by subscription	no fee
	(b) in any other case	30
10.7	For a certificate issued by ASIC, except a certificate issued under:	
	(a) paragraph 118(1)(c), section 160, subsection 164(6), subsection 165(5), paragraph 601BD(1)(c) or subsection 601CU(1), 1280(5), 1282(6) or 1283(2); or	
	(b) regulation 10.1.07 of the Corporations Regulations	16
10.8	For supplying a certified copy of, or a certified copy of an extract from, a document filed or lodged with ASIC, in addition to the fee payable under item 10.2, 10.4 or 10.5	16
10.9	For the production by ASIC, pursuant to a subpoena, of a document in its custody, in addition to the fee payable under item 10.2, 10.4 or 10.5	30
10.10	Where the inspection of a register or the issue or display of a document occurs at a Business Centre of ASIC, in addition to the fee payable under item 10.1, 10.2, 10.4, 10.5 or 10.6	2
11	Other matters	
11.1	For any act that ASIC is required or authorised to do on the request of a person, if no fee is prescribed in relation to the act, except:	
	(a) an act under section 601AE or 601AF; or	
	(b) where 'no fee' appears in column 3 of an item in relation to the act	30
11.2	For the preparation by ASIC of the statement referred to in paragraph 411(17)(b)	120
11.3	On submitting a proposed statement under subsection 412(1) to ASIC for examination	600

APPENDIX D: STATISTICAL TABLES

The data in the following tables have been sourced from the ASIC database.

Table 1: Company Registrations at 30 June 1999

Number of companies	
Public Companies	17,298
Proprietary Companies	1,087,116
Total Companies at 30 June 1999	1,102,742
Other Information	
Companies limited by shares	1,095,444
Companies limited by guarantee	9,338
Companies limited by shares and guarantee	467
Companies limited with unlimited liability	536
Companies limited with no liability	874
Number of companies known to be disclosing entities	2,419
Companies known to be listed on a stock exchange	1,164
Number of foreign companies	2,047
Number of registrable Australian bodies	708

Table 2: 1998 Annual Return Lodgment Statistics

Number of 1998 annual returns expected to be lodged	1,050,579
Number lodged by 31 January 1999	891,615
Number lodged by 30 June 1999	1,029,532
Number of annual returns lodged electronically	610,421
Number of returns reprinted at request of company or lodging agent on the basis that the original has been misplaced or not received.	70,355

Table 3: 1998 Annual Return Compliance Statistics

Number of annual returns required to be lodged	1,050,579
Number lodged by 31 January 1999	891,615
Number lodged by 30 June 1999	1,029,532
Number of warning notices sent for non lodgment	54,000
Number of penalty notices sent for non lodgment	34,564
Number of summonses sent for non lodgment	21,269

Table 4: Change to Membership Particulars Statistics

Number of public companies at 30 June 1999	17,298
Number of public companies having an ultimate holding company at 30 June 1999	3,451
Number of proprietary companies at 30 June 1999	1,087,116
Number of proprietary companies having an ultimate holding company at 30 June 1999	42,851
Number of 1998 annual returns lodged notifying or changing ultimate holding company	427
Number of public companies that notified a change in members on the 1998 annual return	3,695
Number of proprietary companies that notified a change in members on the 1998 annual return	284,985
Number of other notifications lodged between 1 July 1998 and 30 June 1999 relating to the issuing of additional shares or cancellation of shares (Form 207).	126,105

Table 5: Change of Particulars Statistics

Number of changes to office particulars lodged (Form 203)	148,837
Number lodged electronically	91,076
Number of changes to officeholders particulars lodged (Form 304)	232,940
Number lodged electronically	93,832

**Table 6: Search Statistics — 1 July 1998 to
30 June 1999**

Number of computer generated extracts requested	1,919,213
Number requested electronically	1,716,362
Number of document images requested	131,922
Number requested electronically	101,727