

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

#### *Corporations Regulations 2001*

#### *Corporations Amendment (Proprietary Company Thresholds) Regulations 2019*

The *Corporations Act 2001* (the Act) provides for the regulation of corporations and financial services.

Section 1364 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Corporations Amendment (Proprietary Company Thresholds) Regulations 2019* (the Regulations) is to increase the thresholds for determining whether a company is a large or small proprietary company for a financial year.

Under the Act, large proprietary companies are required to lodge an annual financial report, a director's report and an auditor's report with the Australian Securities and Investments Commission (ASIC) and are required to have a whistleblower policy in place. Small proprietary companies are generally required to keep sufficient financial records and are only required to lodge or audit financial reports if directed by ASIC or 5 per cent or more of their shareholders.

The Act currently provides that a proprietary company is 'large' for a given financial year if it satisfies at least two of the following:

- the consolidated revenue for the financial year of the company and any entities it controls is \$25 million or more;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is \$12.5 million or more; and
- the company and any entities it controls have 50 or more employees at the end of the financial year.

These thresholds have not been reviewed or adjusted since 2007.

The Act provides that the *Corporations Regulations 2001* may prescribe other amounts or numbers for the three thresholds for determining a large proprietary company. This is to allow the thresholds to be regularly reviewed and adjusted over time to ensure the thresholds accurately reflect genuine economic significance during periods of long and sustained economic growth.

The Regulations adjust these thresholds by doubling them as follows:

- increasing the annual consolidated revenue threshold to \$50 million or more;
- increasing the value of gross assets to \$25 million or more; and

- increasing the employee size to 100 employees or more.

The requirement for large proprietary companies to lodge and audit their financial reports was introduced in 1995 to focus regulation of reporting on the financial affairs of proprietary companies which have a significant economic influence.

The financial reports of companies that have economic significance should be publicly available because of their size and potential to affect the community and the economy. The larger the size, the more likely it is that there will exist users dependent on general purpose financial reports as a basis for making economic decisions.

The revenue and assets thresholds are being increased to account for nominal economic growth (as measured by changes in nominal gross domestic product (GDP)) since the thresholds were last adjusted in 2007. Adjusting the thresholds for nominal economic growth means that the increase in the thresholds will include a component for inflation as well as economic growth.

Growth in nominal GDP from 2006-07 to 2017-18 was 70 per cent, reflecting an increase of \$17.5 million and \$8.75 million to the revenue and asset thresholds, respectively. An additional increase of \$7.5 million and \$3.75 million to the revenue and asset thresholds, respectively, has been included to double the thresholds. Similarly, the employee threshold, as a relevant indicator of the size and significance of a company, is also being doubled.

The increased thresholds provided in the Regulations will ensure financial reporting obligations are targeted at economically significant companies, while reducing costs for smaller sized companies that will no longer be required to lodge audited financial reports with ASIC.

Approximately one third of proprietary companies that lodged audited financial reports with ASIC for the 2017-18 financial year will no longer be required to lodge financial reports under the increased thresholds. Average access rates for the financial reports of these proprietary companies through ASIC is significantly lower than the average access rates for the remaining large proprietary company reporting population.

Details of the Regulations are set out in the [Attachment](#).

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

Public consultation on the Regulations occurred between 16 November 2018 and 14 December 2018. There were 35 submissions to the consultation. The submissions provided a wide range of views on what the thresholds for determining a large proprietary company should be. No changes have been made to the Regulations following the consultation process.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Legislative and Governance Forum for Corporations has given approval for the Regulations.

The Regulations commence on 1 July 2019 and apply in relation to the financial years beginning on or after 1 July 2019.

A statement of Compatibility with Human Rights is included in the Attachment.

**ATTACHMENT**  
**Details of the *Corporations Amendment (Proprietary Company Thresholds) Regulations 2019***

**Section 1 — Name of Regulations**

This section specifies that the name of the Regulations is the *Corporations Amendment (Proprietary Company Thresholds) Regulations 2019* (the Regulations).

**Section 2 — Commencement**

This section provides for the Regulations to commence on 1 July 2019.

**Section 3 — Authority**

This section states that the Regulations are made under the *Corporations Act 2001*.

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1**

Item 1 of Schedule 1 provides for a new regulation to double the existing thresholds for determining whether a company is a large or small proprietary company for a financial year.

Under the new threshold, a company will be a large proprietary company for a financial year if it satisfies at least two of the following:

- the consolidated revenue for the financial year of the company and any entities it controls is \$50 million or more;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is \$25 million or more; and
- the company and any entities it controls have 100 or more employees at the end of the financial year.

Similarly, a company will be a small proprietary company for a financial year if it satisfies at least two of the following:

- the consolidated revenue for the financial year of the company and any entities it controls is less than \$50 million;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is less than \$25 million; and

- the company and any entities it controls have less than 100 employees at the end of the financial year.

## Item 2

Item 2 of Schedule 1 inserts a new transitional provision into the *Corporations Regulations 2001* to provide that the increases to the proprietary company thresholds apply in relation to financial years beginning on or after 1 July 2019. This transitional provision ensures that companies can benefit from the revised thresholds from the 2019-20 financial year onwards, including if they have substituted accounting periods.

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

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

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The Legislative Instrument doubles the thresholds for determining whether a company is a large or small proprietary company.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.