

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Corporations (Coronavirus Economic Response) Determination (No. 3) 2020

Section 1362A of the *Corporations Act 2001* (the Act) provides that the Minister may, by legislative instrument, exempt specified classes of persons from the operation of specified provisions of the Act or the *Corporations Regulations 2001* (the Regulations). Section 1362A of the Act also provides that the Minister may, by legislative instrument modify provisions of the Act or the Regulations in relation to specified classes of persons.

The purpose of the instrument-making power is to provide the Minister with a temporary power to provide short-term regulatory relief to those who are unable to meet their obligations under the Act or the Regulations due to the Coronavirus, and short-term regulatory changes to facilitate continuation of business or mitigate the economic impact of Coronavirus.

The *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* (the Determination) remakes the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (first instrument). The Explanatory Statement for the first instrument explains the effect of the Determination.

The first instrument is being remade by the Determination to ensure that for at least the rest of this year, companies can hold their Annual General Meeting (AGM), and other meetings, using technology rather than face-to-face. Stakeholders have indicated that many companies would typically hold their AGMs between when the first instrument is due to expire and the end of the year. As the Coronavirus situation is uncertain, public health and travel restrictions may continue to limit face-to-face meetings. The Determination will facilitate continuation of business in circumstances relating to the coronavirus, by enabling companies to plan their AGMs and other meetings with certainty that they can go ahead while also complying with any Coronavirus-related restrictions that are in place at that time.

The Determination also extends the timeframe for companies to use electronic signatures in this uncertain time when public health and travel restrictions and postal delays remain in place. This gives certainty that when company officers sign a document electronically (including an electronic document), the document has been validly executed.

On this basis the Treasurer is satisfied that the modifications in the Determination are appropriate to facilitate the continuation of business in circumstances relating to the Coronavirus, and that it would not be reasonable to expect companies and those with dealings with them to comply with the provisions because of the impact of the Coronavirus.

The Determination has effect for six months from when it is made.

An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

A more detailed explanation of the Determination is at [Attachment A](#).

A Statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the Corporations (Coronavirus Economic Response) Determination (No. 1) 2020

Section 1 – Name

The title of the Determination is the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* (the Determination).

Section 2 – Commencement

This Determination takes effect on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

The Determination is made under section 1362A of the Act.

Sections 4 – 8

Please refer to the Explanatory Statement for the first instrument (FRL ID: F2020L00553).

Paragraph 5(3)(b) was updated so that companies that have already given notice of a meeting do not have to issue it again where it already informs members how they may participate in a meeting using technology.

A numbering error was addressed at subsection 7(3).

Section 9 – repeal and savings

The Determination is repealed at the end of the period of six months beginning on the day after the Determination was made, in line with the effect of paragraph 1362A(4)(a) of the Act.

The *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* is repealed as this Determination, which is otherwise the same in terms of the substantive provisions, replaces it. Section 9 is inserted to confirm that it is intended that this Determination saves conduct that a company has done, such as giving a notice or using an electronic signature while the first Determination was in force, so that it is not required to repeat anything it has already done.

Statement of Compatibility with Human Rights

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

Corporations (Coronavirus Economic Response) Determination (No. 3) 2020

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 modifies certain provisions of the *Corporations Act 2001* (the Act) and *Corporations Regulations 2001* to exempt certain persons from the operation of certain provisions where those provisions interfere with the company or person's ability to manage their business through the impacts of the Coronavirus.

Human rights implications

This Legislative Instrument engages Article 12 of the ICESCR – right to health.

Article 12 of the International Covenant on Economic, Social and Cultural Rights protects the right of all individuals to enjoy the highest attainable standards of physical and mental health. This includes the application of measures for the prevention, treatment and control of epidemic, endemic, occupational and other diseases.

This Legislative Instrument promotes the right to health by assisting to control the spread of communicable diseases that may cause serious harm to human health. The Act requires or permits companies to hold certain meetings at physical venues. This Legislative Instrument modifies the operation of the Act so that companies are permitted to hold meetings using one or more technologies. This allows meetings to proceed, without contributing to the spread of communicable diseases that can occur when large numbers of people gather together.

Conclusion

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