

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister for Superannuation, Financial Services and Financial Technology; Parliamentary Secretary to the Treasurer**

*Business Names Registration Act 2011*

*Corporations Act 2001*

*Crimes (Currency) Act 1981*

*Federal Financial Relations Act 2009*

*Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020*

Subsection 28(1) of the *Business Names Registration Act 2011* provides that the Minister may, by legislative instrument, determine that a word or expression is restricted for the purposes of the *Business Names Registration Act 2011*.

Section 105-1 in Schedule 2 to the *Corporations Act 2001* provides that the Minister may make rules providing for matters required or permitted by the Schedule to be provided, or necessary or convenient to be provided for carrying out or giving effect to the Schedule.

Subsection 29(7) of the *Crimes (Currency) Act 1981* provides that an article that is condemned as forfeited to the Commonwealth under the Act, or under the *Crimes Act 1914*, shall be dealt with or disposed of in accordance with the directions of the Treasurer.

Section 13 of the *Federal Financial Relations Act 2009* provides that financial assistance is payable in accordance with that section to a State or Territory, for a financial year, for the purpose of expenditure on disability services. For the purposes of section 13, the Minister may determine the manner in which the total amount of all financial assistance payable to the States and Territories for a financial year under section 13 is to be adjusted (relative to the previous financial year) and the manner in which the total amount is to be divided between the States and Territories.

The purpose of the *Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020* (the Instrument) is to make minor and technical amendments to legislative instruments in the Treasury portfolio, including laws relating to corporations, business names and currency. The amendments are part of the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, correct unintended outcomes and improve the quality of laws. The process was first supported following a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax law changes. It has since been expanded to all Treasury portfolio legislation.

The Instrument amends various Treasury portfolio instruments to make minor and technical changes that correct typographical errors and unintended outcomes and repeal inoperative provisions. These changes ensure that the amended instruments operate in the way intended.

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

Consultation was undertaken on this Instrument from 21 October 2020 to 17 November 2020.

The Authorising Acts specify no conditions that need to be satisfied before the power to make the Instrument may be exercised.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument commenced the day after it was registered.

The Instrument is estimated to have an unquantifiable impact on receipts over the forward estimates period and is estimated to have no more than a minor impact on compliance costs.

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

**Details of the *Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020***

**Section 1 – Name of the Instrument**

This section provides that the name of the Determination is the *Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020* (the Instrument).

**Section 2 – Commencement**

Schedule 1 to the Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

The Instrument is made under:

- the *Business Names Registration Act 2011*; and
- the *Corporations Act 2011*; and
- the *Crimes (Currency) Act 1981*; and
- the *Federal Financial Relations Act 2009*.

**Section 4 – Schedule**

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

**Schedule 1 – Amendments**

**Item 1 – Amendment to the *Business Names Registration (Availability of Names Determination) 2015***

Part 1 of Schedule 2 to the *Business Names Registration (Availability of Names) Determination 2015* sets out a list of words or expressions that are unable to be used in a business name registered to an entity under the Act. Any words or expressions that have the same meaning as the below expressions are also restricted in accordance with subsection 9(2) of the *Business Names Registration (Availability of Names) Determination 2015*.

Item 1 inserts three new expressions into the table in Part 1 of Schedule 2 of the *Business Names Registration (Availability of Names) Determination 2015*. The inclusion of these expressions are a minor change that reflect the kinds of things that are already included in the Part 1 of Schedule 2 to the *Business Names Registration (Availability of Names) Determination 2015*. The inserted expressions relate to the words associated with an Aboriginal Corporation.

The new expressions that have been included are:

- Indigenous Corporation;
- Aboriginal and Torres Strait Islander Corporation; and
- Torres Strait Islander and Aboriginal Corporation.

**Item 2 – Amendment to the *Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019***

The *Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019* (2019 Determination) specifies how certain public authorities must deal with an item that is forfeited to the Commonwealth.

Item 2 amends the note to section 7 of the 2019 Determination to make it clear that the obligations that lie with the Governor of the Reserve Bank of Australia, the Chief Executive Officer of the Royal Australian Mint, or the Chief Executive of the Australian Office of Financial Management may be undertaken by an official of that Commonwealth entity. The amendments clarifies this by inserting the relevant section numbers into the pre-existing note.

**Item 3 – Amendment to the *Federal Financial Relations (National Specific Purpose Payments for 2019-20) Determination 2020***

The *Federal Financial Relations (National Specific Purpose Payments for 2019-20) Determination 2020* determines the manner in which the total amount of all financial assistance payable to the States and Territories for a financial year under sections 12 and 13 of the *Federal Financial Relations Act 2009* is to be indexed or adjusted (respectively) for the 2019-20 financial year and the manner in which the total amounts under sections 12 and 13 are to be divided between the States and Territories.

Item 3 makes a technical amendment to substitute the year from “2018-19” to “2019-20” in the table heading in subsection 6(3) of the *Federal Financial Relations (National Specific Purpose Payments for 2019-20) Determination 2020*. This amendment ensures that the table heading properly reflects the correct financial year for the information as specified in the relevant provision.

**Item 4 and 5 – Amendments to the *Insolvency Practice Rules (Corporations) 2016***

In 2018, the Government made the *Insolvency Practice Rules (Corporations) Amendment (Restricting Related Creditor Voting Rights) Rules 2018* (the 2018 Amendments). The 2018 Amendments limited related creditors’ voting rights at meetings of creditors to the value of the consideration they paid for an assigned debt. The 2018 Amendments also require external administrators to ask creditors (whether the creditors are related creditors or not) to provide evidence in writing in relation to any assigned debt and the consideration provided for the assignment. The purpose of this amendment was to target illegal phoenixing activity.

Item 4 extends the limitation of related creditors’ voting rights to votes on proposals considered without a meeting of creditors. Section 75-130 of the Rules provides for the passage of resolutions without a meeting of creditors. A resolution is passed if a majority of responding creditors and a majority in value of the responding creditors approve a resolution, and no more than 25 per cent in value of responding creditors object to the resolution being made without a meeting of creditors.

Item 4 inserts new subsection 75-130(4A) to the *Insolvency Practices Rules (Corporations) 2016*, which requires the value of a related creditor to be worked out by taking the value of any assigned debt to be equal to the value of the consideration the related creditor gave for the assignment. This fixes an unintended consequence of the 2018 Amendment that the amendments did not take into account resolutions made on the papers.

The new rule applies both to working out whether there is a majority in value of responding creditors in favour of a proposal and in working out if 25 per cent in value of those creditors object to the resolution being made with a meeting of creditors.

A related creditor is a related entity and also a creditor of the company under administration (subsection 75-41(4) of Schedule 2 to the *Corporations Act 2001*). A related entity includes company directors, members and their relatives.

Item 5 provides that the amendments commenced on the day after they were registered and apply in relation to proposals put to creditors of a company on or after commencement.

**Statement of Compatibility with Human Rights**

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

***Treasury Laws Amendment (Miscellaneous and Technical Amendments) Instrument 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 *Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020* (the Instrument) makes minor and technical amendments to legislative instruments in the Treasury portfolio, including laws relating to corporations, business names and currency. The amendments are part of the Government's commitment to the care and maintenance of Treasury portfolio legislation.

**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.