

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

A New Tax System (Goods and Services) Act 1999

Business Names Registration Act 2011

Competition and Consumer Act 2010

Corporations Act 2001

Foreign Acquisitions and Takeovers Act 1975

Income Tax Assessment Act 1997

Tax Agent Services Act 2009

*Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations
2021*

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999*, section 90 of the *Business Names Registration Act 2011*, section 172 of the *Competition and Consumer Act 2010*, section 1364 of the *Corporations Act 2001*, section 139 of the *Foreign Acquisitions and Takeovers Act 1975*, section 909-1 of the *Income Tax Assessment Act 1997* and section 70-55 of the *Tax Agent Services Act 2009* (the Authorising Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021* (the Regulations) is to make minor and technical amendments in the Treasury portfolio, including to tax laws, corporations laws, foreign investment laws and laws relating to consumer protections.

Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, update references, correct unintended outcomes and improve the quality of laws. The amendments are part of the Government's commitment to the care and maintenance of Treasury portfolio legislation. The process was first supported by 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 legislation.

The Regulations amend various Treasury portfolio regulations to make minor and technical changes that correct typographical and referencing errors, address unintended outcomes, increase out of date thresholds, and repeal inoperative provisions. These changes ensure that the Treasury regulations operate as intended.

Consultation on the Regulations was undertaken from 5 to 25 May 2021. No submissions were received in respect of the Regulations.

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

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

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

Items 1 to 14 of the Regulations commence on the day after the Regulations are registered.

Item 15 commences on the later of the day after the Regulations are registered and the day that Part 1 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021* commences. However, item 15 does not commence at all if Part 1 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021* does not commence.

If the Regulation is registered in 2021, Item 16 commences on 1 January 2022. Otherwise, Item 16 commences on the later of the first 1 January, 1 April, 1 July or 1 October the day after the instrument is registered.

Items 17 to 19 commence on the later of the day after the instrument is registered, and 1 July 2021.

The commencement of item 20 depends on the commencement of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Advice Fees) Regulations 2021*. If Schedule 1 to those Regulations commences after the day this instrument is registered, item 20 commences immediately after the commencement of Schedule 1 to those Regulations. Otherwise, item 20 commences on the start of the day after the instrument is registered.

The Office of Best Practice Regulation considers that the proposal is unlikely to have a more than minor regulatory impact. Therefore a Regulation Impact Statement is not required.

A statement of Compatibility with Human Rights is at [Attachment A](#)

Details of the Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021

Section 1 – Name of the Regulations

This section states that the name of the Regulations is the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section sets out the commencement details of the Regulations, which are outlined above.

Section 3 – Authority

This section states the Regulations are made under:

- *A New Tax System (Goods and Services) Act 1999*
- *Business Names Registration Act 2011*
- *Competition and Consumer Act 2010*
- *Corporations Act 2001*
- *Foreign Acquisitions and Takeovers Act 1975*
- *Income Tax Assessment Act 1997*
- *Tax Agent Services Act 2009*

Section 4 – Schedules

This section gives legal effect to the amendments in the Schedules.

Schedule 1 – Amendments

Part 1 – Amendments

Item 1 - Amendments to the *Competition and Consumer Regulations 2010*

This item makes the law more readable by clarifying the Office of the Registrar is open every business day. It also removes reference to the *Public Service Act 1992-1973*, which no longer exists.

Items 2 - 12 - Amendments to the *Tax Agent Services Regulations 2009*

These items repeal certain out of date provisions.

Items 2, 3 and 4 repeal provisions which enabled the transition of BAS agent association recognition when the tax agent service regime was established. These

provisions ceased operating on 1 March 2013, which was 3 years after the day Part 2 of the *Tax Agent Services Act 2009* commenced. Items 5 and 8 make consequential amendments to support this change.

Item 6 repeals a provision which enabled the transitional treatment of certain financial product advice when the tax agent service regime was established. This provision ceased operating on 1 July 2014, which was 3 years after the expiry of an exemption from the regime for those financial products. Item 7 makes consequential amendments to support this change.

Items 9 to 12 repeal references to dates which have since passed.

Item 13 - Amendments to the *Corporations Regulations 2001*

This item corrects a numbering error, where two different subparagraphs are labelled '(i)'.

Item 14 - Amendments to the *A New Tax System (Goods and Services) Regulations 2019*

The Australian Capital Territory (ACT) has introduced a new compulsory third-party scheme for car accident insurance. All third-party schemes for car accident insurance are listed in Commonwealth law. This item updates the list to include the new scheme and its legislation as a specified compulsory third-party scheme, to allow operators of compulsory third-party schemes in the ACT to access special provisions. These provisions would enable operators to have adjustments to correctly reflect margins after settlements of claims and other payments have been taken into account.

The ACT's former compulsory third-party scheme has been retained as it is anticipated that settlements and payments will continue to be made under the former scheme for the foreseeable future.

Part 2 – Other amendments

Item 15 - Amendments to the *Foreign Acquisitions and Takeovers Regulation 2015*

This item makes consequential amendments to support an amendment made by the *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021*.

The amendment made by the Bill allows the Treasurer to extend the decision period by up to 90 days for exemption certificates. Item 16 clarifies in a note that the Treasurer's decision needs to be made before the end of the decision period (including the period extended under the Act).

Item 16 - Amendments to the *Business Names Registration Regulations 2011*

This item allows the Minister to delegate to ASIC the power to consent to the use of a restricted word or expression, or words or expressions that are similar to restricted words or expressions. The Treasurer currently has provided an authorisation for ASIC to carry out these functions. An authorisation ceases to have effect when a new Treasurer is appointed, requiring it to be remade for these administrative decisions. The amendments propose to address this.

The powers can only be delegated to the extent that they are exercised in relation to a particular entity or business. This ensures that there is no sub-delegation of powers, and that only the Minister's administrative functions can be delegated.

This amendment works within the existing delegation framework of the *Business Names Registration Act 2011*. The existing framework only allows the power to be delegated to an ASIC member or senior staff member. Senior staff members are generally 'senior executive service' employee equivalent. The ASIC Chairperson can identify which staff members are a 'senior staff member' in a legislative instrument. This ensures that only staff of sufficient seniority can be delegated the powers.

Items 17 to 19 - Amendments to the *Income Tax Assessment (1997 Act) Regulations 2021*

Section 291-25 of the *Income Tax Assessment Act 1997* outlines an individual's concessional superannuation contributions for a financial year, including amounts specified in the regulations. An amount is included in an individual's concessional contributions in accordance with section 291-25 of the *Income Tax Assessment (1997 Act) Regulations 2021* if it meets the relevant general conditions or it is allocated from a reserve maintained by the trustee, unless it meets one of the relevant exceptions.

Items 17 and 18 clarify that a fee refund paid by a trustee to a member's superannuation account is not a concessional contribution. This means the amount refunded does not count towards the member's concessional contribution cap (the cap for FY20-21 is \$25,000). Currently the fee refund is counted towards the cap, which is an unintended outcome. A fee must be refunded to the member under the *Superannuation Industry (Supervision) Act 1993* if the account is a low balance account, and the total fees for the year are above the maximum level.

Item 19 provides that the item 24 and 25 amendments applies from the 2021-2022 financial year.

Item 20 – Amendments to the *Corporations Regulations 2001*

Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* provides that fee recipients with ongoing fee arrangements produce a fee disclosure statement every 12 months. Fee recipients with arrangements must provide the fee disclosure statement within 60 days.

Under the transitional arrangements (and depending on when the fee recipient provides the statement) the fee disclosure statement must include the fees paid by the client during the 12 month period up to and including the fees paid the day before the fee disclosure statement is given. Similarly, the fee disclosure statement must include the services provided to the client during the 12 month period, up to and including the day before the fee disclosure statement is given. This may result in some fee recipients having only one day to prepare the fee disclosure statement when ordinarily they would have 60 days. This is an unintended outcome.

This item provides that fee disclosure statements given to clients during the transition period need to include a reasonable estimate of the amount of any ongoing fees paid

and services expected to be provided for the 60 day period immediately before the fee disclosure statement is provided rather than the exact amount.

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) Regulations 2021

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 makes minor and technical amendments to regulations in the Treasury portfolio, including tax laws, corporations laws, superannuation laws, laws relating to consumer protection, and foreign investment laws. The amendments are part of the Government's commitment for the care and maintenance of Treasury portfolio legislation.

Human rights implications

Rights to justice

Item 15 of the instrument amends the *Foreign Acquisitions and Takeovers Regulation 2015* to allow the Treasurer to extend a decision to approve or not approve an exemption certificate by up to 90 days. Item 15 clarifies that the Treasurer's decision to grant an exemption certificate needs to be made before the end of 30 day period or the period extended under the Act. The amendments do not allow for merits review of the decision to extend the time and do not require the Treasurer to afford an applicant natural justice in the decision-making process.

The powers to which these limitations apply only relate to the time period to make a decision. An applicant's review rights, and review process of the substantive decision are not affected, they will continue attract appropriate review mechanisms. These limitations are appropriate because they allow the Treasurer to extend the decision period to enable cases to be processed more efficiently and meet urgent commercial deadlines without potentially being delayed by procedures such as needing to obtain consent to extend the time to make a decision. Additionally, impacts on these rights are appropriate and proportionate considering the role the foreign investment framework plays in protecting Australia's national interest, including Australia's national security.

Conclusion

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