

EXPLANATORY STATEMENT

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

Corporations Act 2001

Foreign Acquisitions and Takeovers Act 1975

National Consumer Credit Protection Act 2009

Retirement Savings Accounts Act 1997

Superannuation (Unclaimed Money and Lost Members) Act 1999

*Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2)
Regulations 2021*

Section 1364 of the *Corporations Act 2001*, section 139 of the of the *Foreign Acquisitions and Takeovers Act 1975*, section 329 of the *National Consumer Credit Protection Act 2009*, section 200 of the *Retirement Savings Accounts Act 1997* and section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* provides that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

The purpose of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2021* (the Regulations) is to make minor and technical amendments in the Treasury portfolio, including to corporations law, laws relating to foreign acquisitions and takeovers, laws relating to consumer credit, and laws relating to superannuation.

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make minor and technical changes that correct typographical and referencing errors, address unintended outcomes, update out of date references, and repeal inoperative provisions. The changes ensure that the Treasury regulations are fit for purpose and operate as intended. These Regulations also incorporate certain instruments which modify the law directly into the text of the law to improve readability and reduce the incidence of laws being modified via legislative instrument.

Consultation on the Regulations was undertaken from 24 September 2021 to 19 October 2021. Minor and technical changes were made in response to submissions on 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*.

Part 1 of Schedule 1 of the Regulations commences the day after registration.

Part 2 of Schedule 1 of the Regulations commences at the same time as Part 1 of Schedule 8 to the *Corporate Collective Investments Vehicle Framework and Other Measures Act 2021*. The provisions in Part 2 of Schedule 1 of the Regulations do not commence at all if Part 1 of Schedule 8 to the *Corporate Collective Investments Vehicle Framework and Other Measures Act 2021* does not commence.

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

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

Details of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) 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 No. 2) Regulations 2021* (the Regulations).

Section 2 - Commencement

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

Part 2 of Schedule 1 of the Regulations commences at the same time as Part 1 of Schedule 8 to the *Corporate Collective Investments Vehicle Framework and Other Measures Act 2021*. The provisions in Part 2 of Schedule 1 of the Regulations do not commence at all if Part 1 of Schedule 8 to the *Corporate Collective Investments Vehicle Framework and Other Measures Act 2021* does not commence.

Section 3 - Authority

This section states the Regulations are made under:

- *Corporations Act 2001*;
- *Foreign Acquisitions and Takeovers Act 1975*;
- *National Consumer Credit Protection Act 2009*;
- *Retirement Savings Accounts Act 1997*; and
- *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Section 4 – Schedules

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

Schedule 1 – Amendments

Part 1 – Amendments commencing day after registration

Items 1 – 9 – Amendments to the *Corporations Regulations 2001*

Items 1 to 9 make several amendments to incorporate various modifications to the *Corporations Regulations 2001* made by ASIC Class Orders. These amendments

improve readability of the law and reduce the number of ASIC Class Orders modifying the law.

Item 1 inserts an omitted reference to Division 4A of the *Corporations Act 2001* to the list of provisions in regulation 7.8.13(2)(a)(i) of the *Corporations Regulations 2001*. The omission of the reference occurred when Division 4A of the *Corporations Act 2001* was inserted into Part 7.8 of that Act in 2009. The issue was previously addressed by the *ASIC Corporations (AFSL Audit Opinion) Instrument 2015/586*. The effect of inserting the reference to Division 4A is that auditors are required to provide ASIC with their opinion on the effectiveness of the internal controls used by the Australian Financial Service licensee to comply with Division 4A in the *Corporations Act 2001*, in addition to the other provisions they are already required to consider.

Items 2 and 3 incorporate ASIC Class Order 11/1340 into the primary law by removing the reference to the APRA hotline and updating the website reference in regulations 7.9.07FA(7A)(ca)(iii) and 7.9.14D(1)(c) of the *Corporations Regulations 2001* to <http://www.fcs.gov.au>. This is a result of updates to the contact details for the Australian Prudential Regulation Authority's Financial Claims Scheme.

Items 4 to 9 incorporate ASIC Class Order 10/630 into the *Corporations Regulations 2001*.

In 2010, the Government announced changes to the long-term performance superannuation disclosure reporting requirements for periodic statements to:

- exclude exit statements;
- allow the industry to use inserts to provide 5-year performance information for 1 more year up until 30 June 2011 rather than embed the information on the face of the periodic statement; and
- exempt traditional funds (of an insurance nature).

The Government also announced it would allow approved deposit funds and pooled superannuation trusts to provide annual reports online, consistent with the entitlement for regulated superannuation funds.

ASIC Class Order 10/630 was registered on the Federal Register of Legislation on 19 July 2010 to implement the announcements, pending the making of regulations. ASIC Class Order 10/630 was subsequently amended six times to extend its operation, with the section imposing the time limit ultimately being removed in 2015.

The amendments in items 4 to 9 largely mirror ASIC Class Order 10/630 in its amendment of regulations 7.9.20AA and 7.9.75BA of the *Corporations Regulations 2001*, except that the amendments also remove legacy provisions that relate to disclosure requirements applying before 30 June 2011.

Regulation 7.9.20AA sets out requirements for periodic statements for superannuation funds other than self-managed superannuation funds. These include requirements as to the content of the statements and the manner in which that content is expressed. There are different requirements applying to the period of 1 July 2009 to 30 June 2010 and applying from 30 June 2010 onwards.

Item 4 amends regulation 7.9.20AA to exclude from those requirements the following circumstances:

- superannuation products that are non-investment or accumulation life insurance policies offered through the regulated superannuation fund;
- superannuation products that have no investment component; and
- periodic statements relating to a reporting period which starts at the end of a preceding reporting period and ends when the holder of a financial product ceases to hold the product.

Item 8 moves the date from which disclosure requirements differ, from 30 June 2010 to 30 June 2011.

Items 5 to 7 remove the provisions setting out the requirements pre-30 June 2011, as they are no longer relevant.

The amendments have the effect of:

- extending the period in which inserts may have been used for providing a statement of long-term returns, from the period ending 30 June 2010 to the period ending on 30 June 2011; and
- delaying by one year (that is, moving from 30 June 2010 to 30 June 2011) the requirement to state long-term returns as the compound average effective rate of net earnings of the investment option for the period of 10 years ending at the end of the last financial year or reporting period before the provision of the periodic statement.

Item 9 extends to approved deposit funds and pooled superannuation trusts the allowance to provide fund information to interest holders in the entity by publishing it on the entity's website. This was previously available only to regulated superannuation funds.

Item 10 – Amendment to the *Foreign Acquisitions and Takeovers Regulations 2015*

Item 10 repeals section 66 of the *Foreign Acquisitions and Takeovers Regulation 2015*. The government's foreign investment reforms in 2020 removed a restriction on the disclosure of protected information under the *Foreign Acquisitions and Takeovers Act 1975*. The reforms also repealed the then relevant section 62 of the *Foreign Acquisitions and Takeovers Regulation 2015*.

Subsequently, the reforms also made an unrelated regulation using the number 62. However, section 66 was an application provision that applied to the former version of section 62. Therefore, section 66 is now redundant. The repeal will prevent any issues with interpretation, especially as section 66 is unrelated to the content currently covered in section 62.

Items 11 and 12 – Amendment to the *National Consumer Credit Protection Regulations*

These items repeal certain out of date provisions.

Item 12 repeals regulation 65B of the *National Consumer Credit Protection Regulations 2010*. This regulation provided an exemption from section 16 of the National Credit Code (in Schedule 1 to the *National Consumer Credit Protection Act 2009*) in relation to a residential investment property and ceased to have effect on 1 October 2010.

Item 12 also repeals regulations 69A and 69B of the *National Consumer Credit Regulations 2010*. These regulations exempted certain persons from requirements to give certain notices that ceased to have effect from 2 March 2014.

Item 11 repeals Subdivision 1.3 of Division 1 of Part 2.4 of the *National Consumer Credit Protection Regulations 2010*. This subdivision provided an exemption for certain persons from responsible lending contract obligations under the *National Consumer Credit Protection Act 2009* and ceased to have effect on 1 April 2011.

Items 13 and 14 – Amendments to the *Retirement Savings Accounts Regulations 1997*

Item 13 repeals Division 2.2 of Part 2 of the *Retirement Savings Accounts Regulations 1997*. This Division prescribed information for the purposes of paragraph 52(2)(a) of the *Retirement Savings Account Act 1997*. Section 52 of the *Retirement Savings Account Act 1997* was repealed by the *Superannuation Legislation Amendment (Choice of Fund) Act 2004*, making Division 2.2 redundant.

Item 14 amends the reference in the note to section 2.18A of the *Retirement Savings Account Regulations 1997* as it previously referred to section 53 of the *Retirement Savings Account Act 1997*. Section 53 was repealed by the *Financial Services Reform (Consequential Provisions) Act 2001*. The reference in the note is therefore redundant and is removed.

Item 15 – Amendment to the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*

Item 15 amends the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to ensure the recovery of overpayment in Part 4B of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* operates properly and is consistent with the other recovery of overpayment provisions in that Act.

The amendments have the effect of requiring the Commissioner of Taxation to give a debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered. The regulations require certain information to be included in the notice.

Part 2 – Amendments commencing at the same time as Part 1 of Schedule 8 to the *Corporate Collective Investments Vehicle Framework and Other Measures Act 2021*

Items 16 to 18 – Amendments to the *Corporations Regulations 2001*

Schedule 8 to the *Corporate Collective Investments Vehicle Framework and Other Measures Bill 2021* (at the time of registration of this instrument the Bill is before Parliament) seeks to incorporate into the primary law various regulations that previously modified the primary law. Part 2 of the Regulations repeals the relevant provisions in the *Corporations Regulations 2001* that are incorporated into the primary law through that Bill.

Item 16 repeals Part 7.6A of the *Corporations Regulations 2001*. Regulations 7.6.08(1) and (2) of the *Corporations Regulations 2001* modified section 916B *Corporations Act 2001* to ensure any authorised representative can appoint an individual person to act on behalf of the licensee so long as the licensee consents in writing to that occurring, and the representative making the appointments was not themselves appointed in that manner. Regulation 7.6.08(3) of the *Corporations*

Regulations 2001 modified subsection 916F(1AA) of the *Corporations Act 2001* to include two additional exemptions where authorised representatives were not required to notify ASIC of further appointed individuals who provide financial services in specific circumstances. The authoriser is not required to notify ASIC where the representative is provides personal advice about a basic deposit product or a facility for making non-cash payments that relates to a basic product. Alternatively, the authoriser is only required to provide information about the representative when requested. As a result of incorporating this amendment into the *Corporations Act 2001*, Part 7.6A of the *Corporations Regulations 2001* is repealed by item 16.

Items 12 and 13 of Schedule 8 to the Corporate Collective Investments Vehicle Framework and Other Measures Bill 2021 updates references from ‘days’ to ‘business days’ in sections 946C and 1019B of the *Corporations Act 2001*.

The modification power in regulation 7.7.10AH of the *Corporations Regulations 2001* was used to modify the reference in section 946C of the *Corporations Act 2001* from calendar days to business days until the change could be made permanently in that Act. The effect of this modification was that time critical provision of a Statement of Advice(s) must occur within five business days of an additional service being provided, rather than within five calendar days. As a result of incorporating this amendment into the *Corporations Act 2001*, regulation 7.7.10AH of the *Corporations Regulations 2001* is repealed by item 17.

Section 1019B of the *Corporations Act 2001* was modified by regulation 7.9.15G of the *Corporations Regulations 2001*. The effect of this modification was that consumers’ cooling off rights start no later than the fifth business day after they acquire the product, rather than the fifth calendar day. As a result of incorporating this amendment into the *Corporations Act 2001*, regulation 7.9.15G of the *Corporations Regulations 2001* is repealed item 18.

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 No. 2) 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 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

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.