

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Business Names Registration Act 2011

Corporations Act 2001

Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022

Sections 26, 27 and 28 of the *Business Names Registration Act 2011* provides that the Minister may, by legislative instrument, determine various matters relating to business names. Section 105-1 of the Insolvency Practice Schedule (Corporations) (contained in Schedule 2 of the *Corporations Act 2001*) provides that the Minister may, by legislative instrument, make rules for matters necessary or convenient to be provided in order to carry out or give effect to the Schedule.

The purpose of the *Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022* (the Instrument) is to make miscellaneous and technical amendments to two instruments in the Treasury portfolio. The amendments reflect the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct errors and unintended outcomes, make technical changes, and improve the quality 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 legislation. It has since been expanded to all Treasury portfolio legislation.

The Instrument amends two Treasury portfolio instruments to correct drafting errors and unintended outcomes, repeal inoperative provisions, and make other technical changes. These changes help maintain and improve the quality of Treasury portfolio legislation.

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

The authorising provisions in the *Business Names Registration Act 2011* and *Corporations Act 2001* specify no conditions that need to be met before the powers to make the Instrument may be exercised. The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Section 48A of the *Legislation Act 2003* provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of section 48A, if the Instrument is not disallowed, the Instrument will automatically repeal when the disallowance period ends. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Instrument.

Public consultation on the Instrument ran from 2 September 2022 to 29 September 2022. Seven submissions were received, many of which supported the minor and technical amendment process. No submissions mentioned the Instrument.

The Office of Best Practice Regulation (OBPR22-02610) considers that the proposal is unlikely to have a more than minor regulatory impact. Therefore, a Regulatory Impact Statement is not required.

The Instrument commenced the day after it was registered on the Federal Register of Legislation.

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

Details of the *Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022*

Section 1 – Name of the Instrument

This section states that the name of the Instrument is *Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022* (the Instrument).

Section 2 – Commencement

Section 2 of the Instrument sets out the commencement details of the Instrument. The whole of the instrument commences on the day after the instrument is registered.

Section 3 – Authority

This section states that the Instrument is made under the *Business Names Registration Act 2011* and *Corporations Act 2001*.

Section 4 – Schedule

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

Schedule 1 – Amendments

Business Names Registration (Availability of Names) Determination 2012

Item 1 repeals the *Business Names Registration (Availability of Names) Determination 2012* (2012 Determination).

Section 26 and subsections 27(1) and 28(1) of the *Business Names Registration Act 2011* provides that the Minister may, by legislative instrument, determine identical, undesirable and restricted words and expressions for business names.

The 2012 Determination set out the following matters in relation to business names:

- rules for determining whether a business name is identical or nearly identical to another business name or to a name other than a company name;
- undesirable names; and
- words or expressions that are restricted.

In 2015, the *Business Names Registration (Availability of Names) Determination 2015* (2015 Determination) commenced operation. The 2015 Determination is also made under the *Business Names Registration Act 2011* and includes the same matters as contained in the 2012 Determination. The 2015 Determination did not repeal the 2012 Determination and the 2012 Determination

remained in operation although it had been replaced by the 2015 Determination. The Instrument repeals the 2012 Determination as it is confusing for the 2012 Determination to be in operation when it is no longer current or relied on.

Business Names Registration (Availability of Names) Determination 2015

Item 2 amends item 190 in Schedule 1 to the *Business Names Registration (Availability of Names) Determination 2015* to correct a punctuation error. The amendment replaces “limolimosines” with the intended phrase “limo, limosines”.

Insolvency Practice Rules (Corporations) 2016

Items 3 and 4 amend the heading of sections 75-140 and 75-145 of the *Insolvency Practice Rules (Corporations) 2016* to remove the words ‘of creditors’. Division 75 of the *Insolvency Practice Rules (Corporations) 2016* sets out the requirements for convening and holding meetings concerning companies during an external administration. Section 75-140 of the *Insolvency Practice Rules (Corporations) 2016* sets out the requirements for adjourning meetings during an external administration and section 75-145 sets out the requirements for taking minutes at meetings during an external administration. The reference to ‘of creditors’ in the heading of sections 75-140 and 75-145 have been removed to reflect that the sections relate to all meetings covered by the *Insolvency Practice Rules (Corporations) 2016* and not just meetings of creditors. The intention of items 3 and 4 is to ensure clarity about the types of meetings the sections apply to.

Item 4 removes the note from subsections 75-265(2) and (3) of the *Insolvency Practice Rules (Corporations) 2016*. Section 75-265 of the *Insolvency Practice Rules (Corporations) 2016* applies where creditors of an insolvent company pass a resolution at a meeting to remove the external administrator and appoint another person as the external administrator of the company. The note in subsections 75-265(2) and (3) of the *Insolvency Practice Rules (Corporations) 2016* refers to three sections of the *Corporations Act 2001* which are not relevant to the situation in which section 75-265 applies.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022

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 Instruments amends two Treasury portfolio instruments to make minor and technical changes that correct typographical and referencing errors, address unintended outcomes, and repeal inoperative provisions. The changes ensure that the Treasury portfolio instruments are fit for purpose and operate as intended.

Specifically, the Legislative Instrument makes the following amendments:

- repeals the *Business Names Registration (Availability of Names) Determination 2012* as it has been replaced by the *Business Names Registration (Availability of Names) Determination 2015*;
- corrects a punctuation error in the *Business Names Registration (Availability of Names) Determination 2015*; and
- amends the *Insolvency Practice Rules (Corporations) 2016* to amend two confusing headings and remove two notes in Division 75.

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.