



Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 8 December 2022

David Hurley
Governor-General

By His Excellency's Command

Stephen Jones
Assistant Treasurer
Minister for Financial Services

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1 Name

This instrument is the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|--|--|--|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table | The day after this instrument is registered. | 20 December 2022 |
| 2. Schedule 1 | The later of: (a) the start of the day after this instrument is registered; and (b) the same time as Schedule 2 to the <i>Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023</i> commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 15 September 2023 (paragraph (b) applies) |
| 3. Schedule 2 | The later of: (a) the start of the day after this instrument is registered; and (b) the same time as Part 2 of Schedule 1 to the <i>Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023</i> commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 15 September 2023 (paragraph (b) applies) |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Australian Securities and Investments Commission Act 2001*;
(b) the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—ALRC Financial Services Interim Report

Part 1—Main amendments

Corporations Regulations 2001

1 Subregulation 1.0.02(1)

Insert:

cash management trust interest means an interest that:

- (a) is an interest in a registered scheme or a notified foreign passport fund; and
- (b) relates to an undertaking of the kind commonly known as a cash management trust.

quarter day means 31 March, 30 June, 30 September or 31 December.

2 Regulation 7.1.02

Repeal the regulation.

3 Regulation 7.1.07I

Repeal the regulation.

4 Subregulation 7.5A.73(3) (definition of *quarter day*)

Repeal the definition.

5 Regulation 7.6.02AGA

Repeal the regulation.

6 Subregulation 9.10.01(3)

Repeal the subregulation.

7 Subregulation 9.12.02(6) (paragraph (a) of the definition of *Australian entity*)

Repeal the paragraph, substitute:

- (a) an Australian ADI that is permitted under section 66 of the *Banking Act 1959* to assume or use:
 - (i) the word bank, banker or banking; or
 - (ii) any other word (whether or not in English) that is of like import to a word referred to in subparagraph (i); or

Part 2—Consistent headings for regulations defining terms

Corporations Regulations 2001

8 Regulation 1.0.02A (heading)

Omit “Prescribed financial market”, substitute “**Meaning of *prescribed financial market***”.

9 Regulation 5.4.01AAA (heading)

Omit “Statutory minimum and statutory period”, substitute “**Meaning of *statutory minimum and statutory period—prescribed amounts***”.

10 Regulation 5.6.11 (heading)

Omit “Application”, substitute “**Meaning of *proof of debt or claim***”.

11 Regulation 7.1.03 (heading)

Omit “Prescribed CS facility”, substitute “**Meaning of *prescribed CS facility***”.

12 Regulation 7.1.03A (heading)

Omit “Basic deposit products”, substitute “**Meaning of *basic deposit product—additional conditions***”.

13 Regulation 7.9.06A (heading)

Omit “Relevant superannuation entities”, substitute “**Meaning of *relevant superannuation entity***”.

14 Regulation 7.9.50 (heading)

Omit “Exit reporting period”, substitute “**Meaning of *exit reporting period***”.

15 Regulation 8.1.01 (heading)

Omit “Prescribed foreign recognition scheme (Act s 1200A(1))”, substitute “**Meaning of *foreign recognition scheme***”.

16 Regulation 8.1.02 (heading)

Omit “Prescribed offeror (Act s 1200A(1))”, substitute “**Meaning of *offeror—prescribed offer and kind of person***”.

17 Regulation 8.1.03 (heading)

Omit “Prescribed recognised jurisdiction (Act s 1200A(1))”, substitute “**Meaning of *recognised jurisdiction***”.

18 Regulation 12.8.03 (heading)

Omit “What is a member share”, substitute “**Meaning of *member share***”.

19 Clause 102 of Schedule 10 (heading)

Omit “Management costs”, substitute “**Meaning of *management costs***”.

20 Clause 103 of Schedule 10 (heading)

Omit “**Transactional and operational costs**”, substitute “**Meaning of *transactional and operational costs***”.

21 Clause 104 of Schedule 10 (heading)

Omit “**Indirect cost ratio**”, substitute “**Meaning of *indirect cost ratio (ICR)***”.

Part 3—References to rules of court

Corporations Regulations 2001

22 Regulation 1.0.17 (heading)

Omit “rules”, substitute “rules of court”.

23 Subregulations 1.0.17(1) and (2)

Omit “rules”, substitute “rules of court”.

24 Paragraph 5.4.01A(2)(a)

Omit “court rules”, substitute “rules of court”.

25 Paragraph 5.4.01A(2)(a)

Omit “rules” (second occurring), substitute “rules of court”.

26 Paragraph 5.4.01A(2)(b)

Omit “court rules”, substitute “rules of court”.

27 Paragraph 5.4.01A(2)(b)

Omit “rules” (second occurring), substitute “rules of court”.

28 Paragraph 5.6.43A(1)(b)

Omit “rules”, substitute “rules of court”.

29 Subparagraph 7.1.04(8)(b)(iv)

Omit “nor the rules”, substitute “nor the rules of a licensed market or of a licensed CS facility”.

30 Subregulation 7.1.04(10) (definition of *rules*)

Repeal the definition.

31 Form 509H of Schedule 2 (paragraph (b) of note 3)

Omit “rules”, substitute “rules of court”.

Part 4—Application and transitional provisions

Corporations Regulations 2001

32 In the appropriate position in Chapter 10

Insert:

Part 10.48—Application provisions relating to Schedule 1 to the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022

10.48.01 Application of amendment to Form 509H (creditor’s statutory demand for payment of debt)

The amendment to Form 509H of Schedule 2 to this instrument made by Schedule 1 to the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Regulations 2022* applies in relation to a statutory demand served on or after the commencement of Schedule 1 to that Act.

Schedule 2—Forms

Australian Securities and Investments Commission Regulations 2001

1 Schedule 1 (Form 1)

Repeal the form, substitute:

Form 1—Notice requiring appearance at an examination or reasonable assistance in connection with an investigation

(regulation 4)

Australian Securities and Investment Commission Regulations 2001

Australian Securities and Investments Commission

NOTICE REQUIRING APPEARANCE AT AN EXAMINATION OR REASONABLE ASSISTANCE IN CONNECTION WITH AN INVESTIGATION

To:

¹

In relation to an investigation of

²

you are notified that under subsection 19(2) of the *Australian Securities and Investments Commission Act 2001* ('the Act') you are required:

(a) to appear at ³ on

⁴ at/using

⁵ before

⁶

for examination on oath or affirmation and to answer questions put to you in relation to the investigation; and

(b) to give the Australian Securities and Investments Commission all reasonable assistance in connection with the investigation.

Please note the provisions of subsection 23(1) of the Act (relating to legal representation) and section 68 of the Act (relating to self-incrimination). The effect of those provisions is set out at the end of this form.

Dated

⁴.

Signature of person authorised
by the Commission to conduct the
examination:

NOTICE OF RELEVANT STATUTORY PROVISIONS

1. Subsection 23(1) of the Act provides that a person who is required to submit to an examination is entitled to have his or her lawyer attend the examination. It also provides that the person's lawyer may address the inspector or ask the person questions about matters raised with the person by the inspector.
2. (1) You must not fail to comply with this notice without reasonable excuse (see subsection 63(1) of the Act).

(2) It is not a reasonable excuse for failure to comply with this notice that giving information or signing a record or producing a book might tend to incriminate you or expose you to a penalty (see subsection 68(1) of the Act).

(3) However, if:

- (a) before making an oral statement or signing a record in answer to this notice you claim that making the statement or signing the record might tend to incriminate you or expose you to a penalty; and
- (b) making the statement or signing the record might in fact tend to incriminate you or expose you to a penalty;

the statement, or the fact that you have signed the record, is not admissible in evidence in any criminal proceedings, or proceedings for the imposition of a penalty, against you other than proceedings in respect of the falsity of the statement or the record.

(4) The right to make a claim of this kind is not available to a body corporate (see subsections 68(2) and (3) of the Act).

1 *insert full name and address of the person to whom the notice is to be given*

2 *insert the nature of the matter to which the investigation relates*

3 *insert time of day*

4 *insert date*

5 *insert full particulars of:*

(a) if the examination will be held at one or more physical venues—the address of the place at which the requirement is to be satisfied; and

(b) if the examination will be held using virtual enquiry technology—details of the virtual enquiry technology to be used

6 *insert full name of the person conducting the examination*

Corporations Regulations 2001

2 Schedule 1 (table item 3, column 4)

Omit “5249”, substitute “586”.

3 Schedule 2 (Form 5249)

Repeal the form.

4 In the appropriate position in Schedule 2

Insert:

Form 586

(subparagraph 206F(1)(b)(i))

Form 586

Corporations Act 2001

Subparagraph 206F(1)(b)(i)

Notice to demonstrate why disqualification should not occur

IN THE MATTER of (1) _____

**Notice to demonstrate why disqualification should not occur
under section 206F of the Corporations Act 2001.**

To: (2) _____

The records of the Australian Securities and Investments Commission (ASIC) show that you are or were an officer of _____ (3) corporations that have been wound up, being _____ (4),

where a liquidator has reported under subsection 533(1) of the Corporations Act 2001 (the Act) that each of the corporations may be unable to pay its unsecured creditors more than 50 cents in the dollar.

In these circumstances you are required to demonstrate, in accordance with subparagraph 206F(1)(b)(i) of the Act, why you should not be disqualified from managing corporations.

Under subsection 206F(1) of the Act you may be disqualified from managing corporations for a period of up to 5 years.

In making a decision under subsection 206F(1) of the Act ASIC is required to give you an opportunity to be heard in relation to why you should not be disqualified from managing corporations.

AREAS OF CONCERN

ASIC has identified a number of concerns about your conduct which are described in Attachment "A".

The documents on which these concerns are based are listed in Attachment "B".

OPPORTUNITY TO BE HEARD

If you wish to demonstrate why you should not be disqualified from managing corporations you should notify ASIC within 14 days from the date of service of this notice that you require an opportunity of being heard.

You may exercise your right to be heard by:

1. making a written submission;
2. appearing before a person ASIC has appointed to hear the matter (the delegate) and making submissions orally and appearing before the delegate to present evidence.

You may exercise your right by doing any or all of these options.

Once you have notified ASIC of your wish to demonstrate why you should not be disqualified a delegate will write to you with further details of the hearing procedure. The delegate will also inform you of the delegate's decision as to whether the hearing will take place at one or more physical venues and/or by means of virtual enquiry technology.

If you do not wish to demonstrate why you should not be disqualified, a decision will be made by a delegate on the information available.

If you wish to have access to the documents listed in Attachment "B" you should contact ASIC as soon as possible. Access to documents which are identified as "confidential" may be given subject to strict conditions of confidentiality.

Dated this _____ day of _____ 20_____

Signed _____

(5) Delegate of the Australian Securities and Investments Commission

Attachments

Attachment "A"

Areas of concern

Attachment "B"

List of documents upon which concerns are based

DIRECTIONS

- (1) Insert name of person subject of the notice.
- (2) Insert name of person subject of the notice.
- (3) Insert number of corporations of which person was an officer.
- (4) Insert names and ACNs of corporations.
- (5) Insert full name of delegate signing the notice.

5 Schedule 2 (Form 588)

Repeal the form, substitute:

Form 588

(subparagraph 206GAA(1)(b)(i))

Form 588

Corporations Act 2001

Subparagraph 206GAA(1)(b)(i)

Notice to demonstrate why disqualification should not occur

IN THE MATTER of (1) _____

Notice to demonstrate why disqualification should not occur

under section 206GAA of the Corporations Act 2001.

To: (2) _____

The records of the Australian Securities and Investments Commission (ASIC) show that you are or were an officer of _____ (3) corporations that have been wound up, being _____ (4)

where money was advanced for the purposes of paying the entitlements of employees of the corporations under the Fair Entitlements Guarantee Act 2012 and:

- the Commonwealth has received a minimal return, or no return on the advance; and
- ASIC has reason to believe that the Commonwealth is unlikely to receive more than a minimal return on the advance; and
- ASIC has reason to believe that either the corporations contravened the Corporations Act 2001 or Corporations (Aboriginal and Torres Strait Islander) Act 2006 and that the person failed to take reasonable steps to prevent the contravention or the person contravened the Corporations Act 2001 or Corporations (Aboriginal and Torres Strait Islander) Act 2006.

In these circumstances you are required to demonstrate, in accordance with subparagraph 206GAA(1)(b)(i) of the Act, why you should not be disqualified from managing corporations.

Under subsection 206GAA(1) of the Act you may be disqualified from managing corporations for a period of up to 5 years.

In making a decision under subsection 206GAA(1) of the Act ASIC is required to give you an opportunity to be heard in relation to why you should not be disqualified from managing corporations.

AREAS OF CONCERN

ASIC has identified a number of concerns about your conduct which are described in Attachment "A".

The documents on which these concerns are based are listed in Attachment "B".

OPPORTUNITY TO BE HEARD

If you wish to demonstrate why you should not be disqualified from managing corporations you should notify ASIC within 14 days from the date of service of this notice that you require an opportunity of being heard.

You may exercise your right to be heard by:

1. making a written submission; or
2. appearing before a person ASIC has appointed to hear the matter (the delegate) and making submissions orally and appearing before the delegate to present evidence.

You may exercise your right by doing any or all of these options.

Once you have notified ASIC of your wish to demonstrate why you should not be disqualified a delegate will write to you with further details of the hearing procedure. The delegate will also inform you of the delegate's decision as to whether the hearing will take place at one or more physical venues and/or by means of virtual enquiry technology.

If you do not wish to demonstrate why you should not be disqualified, a decision will be made by a delegate on the information available.

If you wish to have access to the documents listed in Attachment "B" you should contact ASIC as soon as possible. Access to documents which are identified as "confidential" may be given subject to strict conditions of confidentiality.

Dated this _____ day of _____

Signed

(5) Delegate of the Australian Securities and Investments Commission

Attachments

Attachment "A"

Areas of concern

Attachment "B"

List of documents upon which concerns are based

DIRECTIONS

- (1) Insert name of person subject of the notice.
- (2) Insert name of person subject of the notice.
- (3) Insert number of corporations of which the person was an officer.
- (4) Insert names and ACNs of corporations.
- (5) Insert full name of delegate signing the notice.