

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer**

*Corporations Act 2001*

*Life Insurance Act 1995*

*National Consumer Credit Protection Act 2009*

*Superannuation Industry (Supervision) Act 1993*

*Treasury Laws Amendment (Modernising Business Communications) Regulations  
2023*

*Treasury Laws Amendment (Modernising Business Communications and Other  
Measures) Commencement Proclamation 2023*

Section 1364 of the *Corporations Act 2001* (the Corporations Act), section 253 of the *Life Insurance Act 1995* (Life Insurance Act), section 329 of the *National Consumer Credit Protection Act 2009* (Credit Act) and section 353 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) provide 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 (Modernising Business Communications) Regulations 2023* (the Regulations) is to reduce regulatory burden and improve technology neutrality by amending requirements in Treasury laws that are consequential to the passage of the *Treasury Laws Amendment (Modernising Business Communications and other Measures) Act 2023*. In particular, the Regulations ensure that certain documents can be sent in either physical or electronic form and amend prescriptive requirements to publish notices in newspapers.

Improving the technology neutrality of Treasury portfolio laws will support business, regulators and individuals by providing greater flexibility and reducing costs when communicating with each other.

The Acts do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations were released for consultation from 19 November 2021 to 10 December 2021 and 21 responses were received. Stakeholders supported the amendments but suggested the removal of the provisions relating to credit, which was done. The regulations were released again for consultation from 6 March to 3 April 2023 and no responses were received.

Consultation: with States and Territories under intergovernmental agreements (excl. GST).

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

Section 48A of the *Legislation Act 2003* provides that a legislative instrument is automatically repealed if:

- the only legal effect of the instrument is to amend or repeal one or more legislative instruments; and
- the instrument does not make any application, saving or transitional provisions relating to the amendment or repeal.

By virtue of section 48A, the repeal of the Regulations will automatically happen when the disallowance period ends, provided the Regulations are not disallowed. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Regulations.

The *Corporations Regulations 2001* (Corporations Regulations), *National Consumer Credit Protection Regulations 2010* (Credit Regulations) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) are exempt from sunseting due to the operation of items 18(d), 42AA and 59A, respectively, of the table in regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Given that the Regulations make consequential amendments to the Credit Regulations, SIS Regulations and Corporations Regulations, the justifications that support their exemptions from sunseting apply equally to the Regulations.

Schedules 1, 3 and 4 to the Regulations commence on the day after the instrument is registered. Schedule 2 commences on the later of the day after the instrument is registered and the commencement of Part 4 of Schedule 1 to the *Treasury Laws Amendment (Modernising Business Communications and other Measures) Act 2023*.

Schedule 2 to the Regulations and Part 4 of Schedule 1 to the *Treasury Laws Amendment (Modernising Business Communications and other Measures) Act 2023* (the Act) provide for non-prescriptive and technology-neutral publications. The commencement provisions in the Regulations therefore ensure that the publication provisions in the Act and the Regulations commence at the same time, while also guarding against retrospective commencement.

The publication provisions in Part 4 of Schedule 1 to the Act commence on a day to be fixed by proclamation, or on the day following six months from the day on which the Act receives Royal Assent. This ensures that commencement date can be determined after the date of passage of the Act is known, thereby facilitating the concurrent commencement of all newspaper provisions.

The date of 1 January 2024 is proclaimed as it is within 6 months of Royal Assent of the Act, and provides sufficient time for industry to adapt to the changes.

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

The Office of Impact Analysis has been (OIA) has been consulted (OIA ref: 42722) and agreed that an Impact Analysis is required.<sup>1</sup>

A statement of Compatibility with Human Rights is at Attachment B.

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<sup>1</sup><https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr6852%22>

**Details of the *Treasury Laws Amendment (Modernising Business Communications) Regulations 2023***

**Section 1 – Name of the Regulations**

The name of the Regulations is the *Treasury Laws Amendment (Modernising Business Communications) Regulations 2023*.

**Section 2 – Commencement**

Sections 1 to 4, and Schedules 1, 3 and 4 to the Regulations commence on the day after the instrument is registered. Schedule 2 commences on the later of the day after the instrument is registered and the commencement of Part 4 of Schedule 1 to the *Treasury Laws Amendment (Modernising Business Communications and other Measures) Act 2023*.

**Section 3 – Authority**

The Regulations are made under the *Corporations Act 2001* (Corporations Act), *Life Insurance Act 1995* (Life Insurance Act), the *National Consumer Credit Protection Act 2009* (Credit Act) and the *Superannuation Industry (Supervision) Act* (SIS Act).

**Section 4 – Schedules**

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 – Sending documents under the *Corporations Act 2001***

***Corporations Regulations 2001***

Item 1 repeals regulation 5.1.02 of the *Corporations Regulations 2001* (Corporations Regulations) to ensure that notices sent by companies to dissenting shareholders can be sent in both electronic and physical form.

**Schedule 2 - Publication requirements**

***Corporations Regulations 2001***

Item 1 amends regulation 5.6.75(1)(a) of the Corporations Regulations to ensure amendments to sections 601CC and 601CL of the Corporations Act are effective. The amendments to the Corporations Act require the relevant notice to be published in a manner that results in the notice being accessible to the public and reasonably prominent and, if a relevant ASIC determination is in force, in a manner specified in the determination.

Item 2 repeals regulation 5D.1.01 of the Corporations Regulations. Regulation 5D.1.01 prescribed the manner of publication of certain notices under section 601WDA of the Corporations Act. As a result of amendments to section 601WDA of the Corporations Act, the manner of publication is now provided in section

601WDA. Accordingly, the content of regulation 5D.1.01, which prescribed the manner of publication, is repealed.

Item 3 adds Part 5D.5 to Part 5D, which specifies the ASIC website as the medium by which ASIC must publish notices under paragraph 601WBH(1)(c).

Items 4 to 14 replace newspaper publication permissions concerning the Securities Exchanges Guarantee Corporation (SEGC) with technology neutral publication permissions and make other associated amendments. Regulations 7.5.30, 7.5.56, 7.5.61 and 7.5.70 of the Corporations Regulations previously allowed the SEGC to publish certain notices in newspapers. The SEGC can now publish the notices in a manner that results in the notice being accessible to the public and reasonably prominent.

Regulations 7.5.30, 7.5.56, 7.5.61 previously accounted for instances where the notices might be published across multiple different newspapers and on different days. As this is no longer a possibility, the amendments provided by items 6, 9 and 12 clarify and simplify the drafting of the regulations.

Regulation 7.6.02AA(4)(b) of the Corporations Regulations previously required ASIC to publish certain proposals and directions on its internet website and in a daily newspaper having national circulation. The amendments provided by items 15 and 16 now require the proposals and directions to be published in a manner that results in the proposal and direction being accessible to the public and reasonably prominent.

Regulation 12.4.04 of the Corporations Regulations previously required certain bodies corporate to give notice of meetings by publishing the notice in certain newspapers. The amendments provided by items 17 to 19 now require the notice to be published in a manner that results in the notice being accessible to the public and reasonably prominent and, if a relevant ASIC determination is in force, in a manner specified in the determination.

### ***Life Insurance Regulations 1995***

Regulation 9.02 of the *Life Insurance Regulations 1995* previously required an applicant to the Court applying for confirmation of a scheme to publish a notice of intention to make the application, in a form approved by APRA, in the Gazette and certain newspapers. Amendments to the *Life Insurance Act 1995* have replaced this publication requirement with a technology neutral publication requirement. Accordingly, items 21 to 23 remove the publication requirement from regulation 9.02.

Regulation 9.01 of the *Life Insurance Regulations 1995* previously referred to regulation 9.02, and thereby the publication requirements it contained. Item 20 omits the reference to regulation 9.02 and substitutes it with a reference to subsection 191(2A) of the *Life Insurance Act 1995*, which contains a technology neutral publication requirement.

### Schedule 3 – National Consumer Credit Protection amendments

#### ***National Consumer Credit Protection Regulations 2010***

Item 1 updates Form 5 of Schedule 1 to remove the reference to newspapers as amendments to the *National Consumer Credit Protection Act 2009* have removed the requirement to publish written notice in a newspaper.

### Schedule 4 – Superannuation Industry (Supervision) amendments

#### ***Superannuation Industry (Supervision) Regulations 1994***

Various amendments are made to the *Superannuation Industry (Supervision) Regulations 1994* to remove spent or redundant provisions relating to the “licensing transition period.”. Items 1 to 9 amend regulations 3A.05 and 3A.06 to accommodate amendments to sections 10, 29CB, 29CC, 29D and 142 of the SIS Act in the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023*.

The amendments to the SIS Act remove references to the “licensing transition period”, which are no longer required. Previously, the SIS Act also required APRA to advertise the making of an instrument that formulates a scheme for the winding-up or dissolution of an entity. The SIS Act amendments now require APRA to publish notice of the making of the instruments in a manner that results in the notice being accessible to the public and reasonably prominent.

**Statement of Compatibility with Human Rights**

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

**Treasury Laws Amendment (Modernising Business Communications) Regulations 2023**

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 (Modernising Business Communications) Regulations 2023* reduce regulatory burden and improve technology neutrality by amending requirements in Treasury laws that are consequential to the passage of the *Treasury Laws Amendment (Modernising Business Communications and other Measures) Act 2023*. The Regulations ensure that certain documents can be sent in either physical or electronic form and amend prescriptive requirements to publish notices in newspapers.

**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.