



Treasury Laws Amendment (Precontractual Disclosure and Other Measures) Regulations 2023

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 13 December 2023

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 (Precontractual Disclosure and Other Measures) Regulations 2023*.

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.	16 December 2023
2. Schedule 1, Part 1	1 April 2024.	1 April 2024
3. Schedule 1, Part 2	The day after this instrument is registered.	16 December 2023
4. Schedule 2, Part 1	The day after this instrument is registered.	16 December 2023
5. Schedule 2, Part 2	The day after the end of the period of 28 days beginning on the day this instrument is registered.	12 January 2024

Note: This table relates only to the provisions of this instrument as originally made.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 Prudential Regulation Authority Act 1998*;
- (b) the *Competition and Consumer Act 2010*;
- (c) the *Corporations Act 2001*;
- (d) the *National Consumer Credit Protection Act 2009*;
- (e) the *Terrorism and Cyclone Insurance Act 2003*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—National Consumer Credit Protection Regulations 2010

Part 1—Precontractual disclosure

National Consumer Credit Protection Regulations 2010

1 Subregulation 3(1)

Insert:

electronic document retrieval system: see regulation 72C.

precontractual document means any of the following:

- (a) a precontractual statement mentioned in paragraph 16(1)(a) of the Code;
- (b) a document forming part of a precontractual statement;
- (c) a notice varying a precontractual statement;
- (d) an information statement mentioned in paragraph 16(1)(b) of the Code.

2 Regulation 26 (paragraph (e) of the definition of *disclosure document*)

Repeal the paragraph.

3 After regulation 72

Insert:

72A Precontractual disclosure—requirements for giving documents other than personally

- (1) This regulation applies in relation to a credit provider giving a precontractual document to a debtor for the purposes of section 16 of the Code unless the credit provider, or an agent of the credit provider, delivers the document physically:
 - (a) to the debtor personally; or
 - (b) to a person acting on the debtor's behalf.

Example: This regulation applies in relation to the credit provider:

- (a) emailing or posting a precontractual document to a debtor; or
- (b) giving a precontractual document to a debtor in the way specified by regulation 72C (electronic document retrieval system).

- (2) For the purposes of paragraph (1)(b), a person is not acting on the debtor's behalf if the person is engaging in credit activities.
- (3) For the purposes of paragraph 16(9)(c) of the Code, the following requirement is specified: the credit provider must be satisfied on reasonable grounds that the debtor has received the precontractual document.
- (4) For the purposes of subregulation (3) of this regulation:
 - (a) the credit provider is taken not to be satisfied that the debtor has received the precontractual document if the debtor has told the credit provider that the debtor has not received the document (unless the debtor has subsequently told the credit provider that the debtor has received the document); and

- (b) subject to paragraph (a), reasonable grounds on which to be satisfied that the debtor has received the document include the following:
 - (i) the document was properly addressed to the debtor and sent to that address (including an electronic address);
 - (ii) the document was given to the debtor in the way specified by regulation 72C, and the relevant notice mentioned in paragraph 72C(1)(a) was properly addressed to the debtor and sent to that address (including an electronic address).

72B Precontractual disclosure—requirements for giving documents by means involving electronic communication

- (1) For the purposes of paragraph 16(9)(b) of the Code, a credit provider must not give a precontractual document to a debtor for the purposes of section 16 of the Code by a particular means involving electronic communication unless:
 - (a) the debtor, after being informed of the matters set out in subregulation (2), consents to the credit provider giving precontractual documents to the debtor by that means; and
 - (b) the precontractual document is given in such a manner that it is reasonable to expect that the debtor will be able to save the document to an electronic file and print it.
- (2) For the purposes of paragraph (1)(a), the matters are that, if the debtor consents to the credit provider giving precontractual documents to the debtor by that particular means:
 - (a) the credit provider might not give precontractual documents to the debtor in paper form in the future; and
 - (b) the debtor should regularly check for electronic communications from the credit provider about precontractual documents; and
 - (c) such consent may be withdrawn at any time.

Note: Regulation 72A provides additional requirements for giving precontractual documents to debtors by means of electronic communication.

72C Precontractual disclosure—making documents available for retrieval on an electronic document retrieval system

- (1) For the purposes of subsection 16(8) of the Code, a credit provider may give a precontractual document to a debtor for the purposes of section 16 of the Code by:
 - (a) notifying the debtor, in accordance with subregulation (3), that the precontractual document is available for retrieval by the debtor on an electronic document retrieval system; and
 - (b) making the precontractual document available for retrieval by the debtor, in accordance with the notification, for a reasonable period after the credit provider gives the notification to the debtor.

Note: This regulation does not limit the ways in which a credit provider may give a precontractual document to a debtor for the purposes of section 16 of the Code.

- (2) The credit provider is taken to give the precontractual document to the debtor at the first time:

- (a) that occurs at or after the time the credit provider gives the debtor the notification mentioned in paragraph (1)(a); and
 - (b) at which the precontractual document is available for retrieval by the debtor as mentioned in paragraph (1)(b).
- (3) For the purposes of paragraph (1)(a), the notice must:
- (a) state that the precontractual document is a precontractual statement, a document forming part of a precontractual statement, a variation of a precontractual statement or an information statement (whichever is applicable); and
 - (b) include any information relating to the precontractual document that the debtor needs in order to be able to retrieve the document.

Example: Paragraph (b)—the document's electronic address or any password protecting the document.

- (4) The precontractual document is available for retrieval by a debtor on an ***electronic document retrieval system*** if the document is available on an information system for retrieval by electronic communication by the debtor.

Note: Regulations 72A and 72B provide additional requirements for giving precontractual documents to debtors by means of electronic communication.

Part 2—Other amendments

National Consumer Credit Protection Regulations 2010

4 Paragraph 28L(1)(m)

Repeal the paragraph.

5 Paragraph 28L(3)(b)

After “nature of”, insert “the”.

Schedule 2—Miscellaneous and technical amendments

Part 1—Amendments commencing day after registration

Division 1—Australian Prudential Regulation Authority Regulations 2018

Australian Prudential Regulation Authority Regulations 2018

1 Paragraph 9(u)

Repeal the paragraph.

Division 2—Notice of appointment of auditor

Corporations Regulations 2001

2 Regulation 2M.4.01

Omit “331AB”, substitute “331AAA or 331AAB”.

Division 3—Delegation

Corporations Regulations 2001

3 After paragraph 9.5.01(a)

Insert:

- (aa) subsection 921G(1) (Approving form for applications for approval of foreign qualifications);

4 After paragraph 9.5.01(ba)

Insert:

- (bb) paragraph 921GA(2)(b) (Approving form for applications for approval of domestic qualifications);
- (bc) subsection 921GA(3) (Approving or refusing to approve domestic qualifications);

5 In the appropriate position in Chapter 10

Insert:

Part 10.51—Application provisions relating to the Treasury Laws Amendment (Precontractual Disclosure and Other Measures) Regulations 2023

10.51.01 Application—decisions approving or refusing to approve domestic qualifications

Paragraph 9.5.01(bc), as inserted by Division 3 of Part 1 of Schedule 2 to the *Treasury Laws Amendment (Precontractual Disclosure and Other Measures) Regulations 2023*, applies to a decision made under subsection 921GA(3) of the Act on or after the commencement of this regulation, whether the relevant application was made under subsection 921GA(1) of the Act before, on or after that commencement.

Division 4—Other amendments of the Corporations Regulations 2001

Corporations Regulations 2001

6 Subregulation 1.0.03A(1) (table items 1A, 1B and 1C)

Repeal the items.

7 Subparagraph 1.0.08(1)(c)(ii)

Repeal the subparagraph, substitute:

- (ii) the dates on which the financial year to which the document relates begins and ends; and

8 Subparagraph 7.6.01(1)(z)(ii)

Omit “exchange.”, substitute “exchange;”.

Division 5—Terrorism and Cyclone Insurance Regulations 2003

Terrorism and Cyclone Insurance Regulations 2003

9 Subregulation 5A(2)

Omit “the one set out in Schedule 1 to the *Financial Sector (Collection of Data) (reporting standard) determination No. 18 of 2013*”, substitute “*Reporting Standard GRS 600.0 Supplementary Capital Data: Premiums and Claims*, set out in the *Financial Sector (Collection of Data) (reporting standard) determination No. 96 of 2023*”.

Part 2—Amendments commencing 28 days after registration

Competition and Consumer Regulations 2010

10 Subregulation 7(1) (table item 8A.1)

Omit “*Utilities Commission Act*”, substitute “*Utilities Commission Act 2000*”.

11 Regulation 7A (table item 9.1)

Repeal the item.

12 Regulation 92 (table items 4 to 10)

Repeal the items, substitute:

5	<i>Public Health Act 2010</i> (NSW)
6	<i>Road Transport Act 2013</i> (NSW)
8	<i>Public Health and Wellbeing Act 2008</i> (Vic.)
9	<i>Road Safety Act 1986</i> (Vic.)

13 Regulation 92 (table item 14)

Repeal the item.

14 Regulation 92 (table item 16)

Repeal the item, substitute:

16	<i>Health (Miscellaneous Provisions) Act 1911</i> (WA)
16A	<i>Public Health Act 2016</i> (WA)

15 Regulation 92 (table items 18 and 19)

Repeal the items.

16 Regulation 92 (table item 21)

Repeal the item, substitute:

21	<i>South Australian Public Health Act 2011</i> (SA)
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17 Regulation 92 (table item 24)

Repeal the item.

18 Regulation 92 (table items 27 to 29)

Repeal the items, substitute:

28	<i>Notifiable Diseases Act 1981</i> (NT)
29	<i>Traffic Act 1987</i> (NT)

19 Regulation 92 (table item 30)

Omit “, 14”.

8	<i>Treasury Laws Amendment (Precontractual Disclosure and Other Measures) Regulations 2023</i>
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20 Regulations 93 and 94

Repeal the regulations.