# EXPLANATORY STATEMENT

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

*Corporations Act 2001*

*National Consumer Credit Protection Act 2009*

*Treasury Laws Amendment (Time-Limiting Exemptions) Regulations 2025*

The purpose of the *Treasury Laws Amendment (Time-Limiting Exemptions) Regulations 2025* (the Amending Regulations)is to time-limit certain exemptions relating to the financial sector. These exemptions are contained in the *Corporations Regulations 2001* (Corporations Regulations) and the *National Consumer Credit Protection Regulations 2010* (Credit Regulations), which are exempt from sunsetting in accordance with the *Legislation Act 2003.* Time-limiting the exemptions will ensure that there is parliamentary scrutiny of any decision to extend the operation of those exemptions.

Section 1364 of the *Corporations Act 2001* and section 329 of the *National Consumer Credit Protection Act 2009* (collectively, the Authorising Acts) provide that the Governor‑General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

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

Treasury did not consult with the public on the draft regulations as these amendments are technical in nature and do not change the substantive law beyond time-limiting its ongoing operation. In accordance with usual practice for sunsetting regulations, Treasury intends to review these exemptions before the time-limiting date to consider whether their operation should be extended. This will provide an appropriate opportunity for further public consultation on the substance of the law.

The amendments are exempt from sunsetting under table items 18 and 42AA of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Corporations Regulationsand the Credit Regulationsare exempt from sunsetting because they contain a large volume of detailed law that is necessary to provide certainty to stakeholders, and they are subject to regular review and amendment.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*, and are subject to disallowance in accordance with that Act.

The Amending Regulations commenced on the day after the instrument is registered on the Federal Register of Legislation.

Details of the Regulations are set out in Attachment A.

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

The Office of Impact Analysis (OIA) has been consulted and an Impact Analysis is not required.

**ATTACHMENT A**

**Details of the *Treasury Laws Amendment (Time-Limiting Exemptions) Regulations 2025***

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment (Time-Limiting Exemptions) Regulations 2025* (the Amending Regulations).

Section 2 – Commencement

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

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (Credit Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument are 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.

Legislative references are made to Schedule 1 to the Amending Regulations unless otherwise stated.

Schedule 1 – Amendments

The amendments implement the Government’s commitments to the Senate Standing Committee for the Scrutiny of Delegated Legislation to time-limit certain exemptions made by regulations that are otherwise exempt from sunsetting. The relevant exemptions were made by the following regulations:

* *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021*;
* *Corporations Amendment (Litigation Funding) Regulations 2022*;
* *Treasury Law Amendment (Rationalising ASIC Instruments) Regulations 2022*; and
* *Corporations Amendment (Design and Distribution Obligations – Income Management Regimes) Regulations 2023*.

These regulations amended the *Corporations Regulations 2001* (Corporations Regulations) and the *National Consumer Credit Protection Regulations 2010* (Credit Regulations).

Under items 18 and 42AA of the table under regulation 12 of the *Legislation (Exemptions and Other Matters) Regulations 2015*, the Corporations Regulations (being a regulation made under the Corporations Act) and Credit Regulations (being a regulation made under the Credit Act) are not subject to sunsetting. The amendments time-limit the operation of certain provisions that create exemptions to the primary law. This will mean that, as occurs with the usual sunsetting process under the *Legislation Act 2003*, there will need to be a review and further legislative action taken if the government considers those exemptions should be extended beyond the time-limited period.

### Part 1 – Partial sunsetting of the *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021*

Part 1 amends the Corporations Regulations to time-limit certain exemptions from the prohibition on hawking, which are otherwise exempt from sunsetting. The amendments provide that this exemption ceases on 31 December 2027. This will mean that this exemption operates for a period of approximately three years from the making of these amending regulations, consistent with the Government’s commitments to the Senate Standing Committee for the Scrutiny of Delegated Legislation.

Subsection 992A(1) of the Corporations Act sets out a general prohibition on offering financial products for issue or sale to a consumer in the course of, or because of, unsolicited contact. Further, subsection 992A(2) of the Corporations Act sets out exceptions to the general prohibition, including an exception in paragraph 992A(2)(c) for an offer, request or invitation of a kind prescribed by the regulations.

Regulation 7.8.21A of the Corporations Regulations was inserted by the *Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021*. The exemption from hawking applies to certain types of offers, requests and invitations, including a customer-initiated offer, request or invitation relating to a basic banking product or certain term deposits with a maximum term of five years. The exemption also applies to certain offers or invitations in relation to a financial product in circumstances where the consumer is expected to have enough knowledge to adequately assess the features and benefits of the financial product or where another regime already provides adequate consumer protection.

**Items 1 and 2** amend regulation 7.8.21A of the Corporations Regulations to provide that the exemptions from the prohibition on hawking ceases on 31 December 2027.

### Part 2 – Partial sunsetting of the *Corporations Amendment (Litigation Funding) Regulations 2022*

Part 2 amends the Corporations Regulations to time-limit the exemptions for litigation funding schemes from meeting the definition of a managed investment scheme (MIS) in section 9 of the Corporations Act, which are otherwise exempt from sunsetting. The amendments provide that this exemption ceases on 1 December 2032, which is approximately 10 years from the commencement of the exemption, consistent with the Government’s commitments to the Senate Standing Committee for the Scrutiny of Delegated Legislation.

The exemption for litigation funding schemes in meeting the definition of a MIS was implemented by the *Corporations Amendment (Litigation Funding) Regulations 2022*. Those amendments implemented the Government’s policy that litigation funding schemes should not be subject to the MIS regime.

**Item 3** amends regulation 5C.11.01 of the Corporations Regulations to provide that the exemption for litigation funding schemes in meeting the definition of a MIS ceases on 1 December 2032.

### Part 3 – Partial sunsetting of the *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022*

Part 3 amends the Corporations Regulations and the Credit Regulations to time-limit the effect of exemptions to hold licences in the financial services and credit services frameworks, which are otherwise exempt from sunsetting. The amendments ensure that such exemptions cease on 1 January 2033, which is approximately 10 years from the commencement of the exemptions, consistent with the Government’s commitments to the Senate Standing Committee for the Scrutiny of Delegated Legislation.

Regulation 7.6.01 of the Corporations Regulations, as implemented by the *Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022* provide exemptions to the requirements in section 911A of the Corporations Act for a financial capability service provider, financial counselling agency, or a trustee of a superannuation entity to hold an Australian financial services licence (AFSL). It also provides an exemption from the requirement in section 29 of the Credit Act to hold a credit licence.

The exemptions apply to a person who provides a financial service or credit assistance, as part of a financial counselling service or financial capability service, if no fees or charges are payable for the services, and independence, conflict of interest, training and competency conditions are met.

**Item 4** amends the Corporations Regulations to provide that the exemption to hold an AFSL set out in paragraphs 7.6.01(1)(db), (za) and (zb) ceases on 1 January 2033, which is approximately 10 years from the commencement of the exemption.

**Item 5** amends the Credit Regulations to provide that the exemption to hold a credit licence in subregulations 20(5) and (5A) of the Credit Regulations ceases on 1 January 2033, which is approximately 10 years from the commencement of the exemption.

### Part 4 – Partial sunsetting of the *Corporations Amendment (Design and Distribution Obligations – Income Management Regimes) Regulations 2023*

Part 4 amends the Corporations Regulations to time limit certain exemptions regarding the design and distribution obligations (DDO) for financial products, which are otherwise exempt from sunsetting. The DDO regime applies to products that may be subject to a product intervention order by the Australian Securities and Investments Commission.

The *Corporations Amendment (Design and Distribution Obligations – Income Management Regimes) Regulations 2023* exempted income management products from the DDO regime, including:

* BasicsCard bank accounts;
* debit cards attached to a BasicsCard bank account;
* income management accounts; and
* stored value cards and vouchers relating to an income management account.

**Item 6** amends the Corporations Regulations to provide that the exemptions from the DDO regime for income management products set out in subregulation 7.8A.20(10) cease on 1 April 2033, which is approximately 10 years from the commencement of the exemption, consistent with the Government’s commitments to the Senate Standing Committee for the Scrutiny of Delegated Legislation..

### Part 5 – Application provisions

**Item 7** inserts two application provisions in Part 10.53 of the Corporations Regulations that preserve the operation of exemptions for litigation funding schemes and income management regimes entered into before the relevant exemptions sunset.

Regulation 10.53.01 provides that the amendments to time-limit the exemption in regulation 5C.11.01 applies in relation to a litigation funding scheme entered into on or after 1 December 2032. This means that litigation funding schemes entered into before 1 December 2032 will continue to be subject to the exemption from the definition of a MIS for activities undertaken after that date. As the exemption will be repealed from 1 December 2032, any new litigation funding schemes entered into on or after that date will not be subject to the exemption.

Regulation 10.53.02 provides that the amendments to time-limit exemptions for income management products from the DDO regime apply to those products issued or offered for regulated sale on or after 1 April 2033. This means that income management products issued or offered for regulated sale before 1 April 2033 will continue to be subject to the exemption from the DDO regime after that date. As the exemption will be repealed from 1 April 2033, any new income management products issued or offered for regulated sale after that date will not be subject to the exemption.

**ATTACHMENT B**

### Statement of Compatibility with Human Rights

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

### Treasury Laws Amendment (Time-Limiting Exemptions) Regulations 2025

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 purpose of the *Treasury Laws Amendment (Time-Limiting Exemptions) Regulations 2025* (the Amending Regulations)is to time-limit certain exemptions relating to the financial sector. These exemptions are contained in the *Corporations Regulations 2001* (Corporations Regulations) and the *National Consumer Credit Protection Regulations 2010* (Credit Regulations), which are exempt from sunsetting in accordance with the *Legislation Act 2003.* The Amending Regulations time-limit certain exemptions, so that any decision to extend the exemptions beyond that date is subject to further parliamentary scrutiny.

### 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.