

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Regulations 2001

Corporations Amendment (Proprietary Company Thresholds) Regulations 2018

The *Corporations Act 2001* (the Act) provides for the regulation of corporations and financial services.

Section 1364 of the *Corporations Act 2001* (the Act) provides 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 Act.

Under the Act, large proprietary companies are required to lodge an annual financial report, a director's report and an auditor's report with the Australian Securities and Investments Commission (ASIC), while small proprietary companies are generally required to keep sufficient financial records. Small proprietary companies are only required to lodge or audit financial reports if directed by ASIC, or 5 per cent or more of their shareholders.

The Act currently provides that a proprietary company is 'large' for a given financial year if it satisfies at least two of the following:

- the consolidated revenue for the financial year of the company and any entities it controls is \$25 million or more;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is \$12.5 million or more; and
- the company and any entities it controls have 50 or more employees at the end of the financial year.

The Act provides that the *Corporations Regulations 2001* may prescribe other amounts or numbers for the three thresholds for determining a large proprietary company. This is to allow the thresholds to be adjusted over time to keep pace with economic growth.

The *Corporations Amendment (Proprietary Company Thresholds) Regulations 2018* (the Regulations) modernise these thresholds by doubling them as follows:

- increasing the annual consolidated revenue threshold to \$50 million or more;
- increasing the value of gross assets to \$25 million or more; and
- increasing the maximum employee size to 100 employees or more.

The increased thresholds provided in the Regulations will ensure financial reporting obligations are targeted at economically significant companies, while reducing costs for smaller sized companies that would no longer be required to lodge audited financial reports with ASIC.

Details of the Regulations are included in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations is exercised.

The Regulations commence on 1 July 2019 and applies in relation to the financial years beginning on or after 1 July 2019.

Details of the Corporations Amendment (Proprietary Company Thresholds) Regulations 2018

Section 1 — Name of Regulations

This section specifies that the name of the Regulations is the *Corporations Amendment (Proprietary Company Thresholds) Regulations 2018* (the Regulations).

Section 2 — Commencement

This section provides for the Regulations to commence on 1 July 2019.

Section 3 — Authority

This section states that the Regulations are made under the *Corporations Act 2001*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations are 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 – Amendments

Item 1

Item 1 of Schedule 1 provides for a new regulation to double the existing thresholds for determining whether a company is a large or small proprietary company for a financial year.

Under the new threshold, a company will be a large proprietary company for a financial year if it satisfies at least two of the following:

- the consolidated revenue for the financial year of the company and any entities it controls is \$50 million or more;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is \$25 million or more; and
- the company and any entities it controls have 100 or more employees at the end of the financial year.

Similarly, a company will be a small proprietary company for a financial year if it satisfies at least two of the following:

- the consolidated revenue for the financial year of the company and any entities it controls is less than \$50 million;
- the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls is less than \$25 million; and

- the company and any entities it controls have less than 100 employees at the end of the financial year.

Item 2

Item 2 of Schedule 1 inserts a new transitional provision into *the Corporations Regulations 2001* to provide that the increases to the proprietary company thresholds apply in relation to financial years beginning on or after 1 July 2019. This transitional provision ensures that companies can benefit from the modernised thresholds from the 2019-20 financial year onwards, including if they have substituted accounting periods.

Statement of Compatibility with Human Rights

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

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 Instrument doubles the thresholds for determining whether a company is a large or small proprietary company.

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.