

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

A New Tax System (Goods and Services) Act 1999

Business Names Registration Act 2011

Competition and Consumer Act 2010

Corporations Act 2001

Foreign Acquisitions and Takeovers Act 1975

Income Tax Assessment Act 1997

Tax Agent Services Act 2009

*Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations
2021*

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999*, section 90 of the *Business Names Registration Act 2011*, section 172 of the *Competition and Consumer Act 2010*, section 1364 of the *Corporations Act 2001*, section 139 of the *Foreign Acquisitions and Takeovers Act 1975*, section 909-1 of the *Income Tax Assessment Act 1997* and section 70-55 of the *Tax Agent Services Act 2009* (the Authorising Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021* (the Regulations) is to make minor and technical amendments to regulations in the Treasury portfolio, including to tax laws, corporations laws, foreign investment laws and laws relating to consumer protections. The amendments are part of the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, correct unintended outcomes and improve the quality of laws. The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax law changes. It has since been expanded to all Treasury legislation.

The Regulations amend various Treasury portfolio regulations to make minor and technical changes that correct typographical errors and unintended outcomes, and repeal inoperative provisions. These changes ensure that the Treasury regulations operate as intended.

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

The Authorising Acts specify no conditions that need to be met before the power to make the Regulations may be exercised.

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

Items 1 to 22 of the Regulations commence on the day after the Regulations are registered.

Item 23 commences on the later of the day after the Regulations are registered and the day that Part 1 of Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Bill 2021* commences. However, item 23 does not commence at all if Part 1 of Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Bill 2021* does not commence.

Item 24 commences on the later of the first 1 January, 1 April, 1 July or 1 October the day after the instrument is registered and 1 January 2022.

Details of the Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021

Section 1 – Name of the Regulations

This section states that the name of the Regulations is the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section sets out the commencement details of the Regulations.

Section 3 – Authority

This section states the Regulations are made under:

- *A New Tax System (Goods and Services) Act 1999*
- *Business Names Registration Act 2011*
- *Competition and Consumer Act 2010*
- *Corporations Act 2001*
- *Foreign Acquisitions and Takeovers Act 1975*
- *Income Tax Assessment Act 1997*
- *Tax Agent Services Act 2009*

Section 4 – Schedules

This section states that items in the Schedules to the Regulations amend or repeal each instrument that is specified in the Schedules, and have effect according to their terms.

Schedule 1 – Amendments

Part 1 – Amendments

Item 1 - Amendments to the *Competition and Consumer Regulations 2010*

This item amends section 16 of the *Competition and Consumer Regulations 2010* to clarify outdated wording. It replaces a complex sentence with the phrase ‘business day’, without changing the meaning of the section. This amendment is made for clarity, and because the *Public Service Act 1992-1973* previously referred to no longer exists.

Items 2 - 12 - Amendments to the *Tax Agent Services Regulations 2009*

These items repeal certain out of date provisions in the *Tax Agent Services Regulations 2009*.

Items 2, 3, 4 and 6 repeal sections or parts of sections which apply to a time period that has since passed. Item 7 is a consequential change to item 6, to repeal the definition of financial product advice.

Items 5 and 8 delete references to the section repealed in item 2. Items 9, 10, 11 and 12 repeal references to when the provisions above applied, as that date has since passed.

Items 13 and 14 - Amendments to the *Income Tax Assessment (1997 Act) Regulations 2021*

Section 291-25 of the *Income Tax Assessment Act 1997* outlines a member's concessional contributions for a financial year, including amounts specified in the regulations. An amount is included in a member's concessional contributions if it is allocated from a reserve maintained by the trustee, unless it meets one of the relevant exceptions. The exceptions are currently provided for in the *Income Tax Assessment (1997 Act) Regulations 2021*.

Item 13 amends section 291-25.01(3) of the *Income Tax Assessment (1997 Act) Regulations 2021* to clarify that a fee refund made under section 99G(6) of the *Superannuation Industry (Supervision) Act 1993*, made from a general reserve, is not considered a concessional contribution.

A fee refund may be made under section 99G(6) of the *Superannuation Industry (Supervision) Act 1993* if the trustee has charged more than the permitted administrative fees. Where the trustee has charged more than is permitted, section 99G(6) provides them with three months after the end of the fund's income year to refund the excess to the member. Item 13 clarifies that a refund made from a reserve, back into the member's account does not result in an excess concessional contribution.

Item 14 provides that the item 13 amendment applies from the 2021-2022 financial year.

Item 15 - Amendments to the *Corporations Regulations 2001*

This item amends section 7.1.04N(3)(b) of the *Corporations Regulations 2001* to correct a numbering error, where two different subparagraphs are labelled '(i)'. The item omits the phrase '(i) different' and substitutes it with phrase '(ii) different'.

Item 16 - Amendments to the *A New Tax System (Goods and Services) Regulations 2019*

Section 195-1.01 of the *A New Tax System (Goods and Services) Regulations 2019* provides the schemes or arrangements that are compulsory third-party schemes for the purposes of the definition of 'compulsory third-party scheme' in the *A New Tax System (Goods and Services) Act 1999*.

The Australian Capital Territory (ACT) has introduced a new compulsory third-party scheme under the *Motor Accident Injuries Act 2019* (ACT).

Item 16 amends section 195-1.01 to include the ACT's new Motor Accident Injuries Insurance Scheme and its governing legislation as a compulsory third-party scheme for the purposes of the definition of 'compulsory third-party scheme'. The ACT's former compulsory third-party scheme has been retained as it is anticipated that settlements and payments will continue to be made under the former scheme for the foreseeable future.

Items 17 - 22 - Amendments to the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020*

Item 20 inserts a new provision in the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* to provide that if the fee calculated under the regulations results in a decimal, then the fee is to be rounded to the nearest whole dollar.

For example, an applicant applies for approval for a reviewable national security action relating to acquiring a business with a consideration value of \$10 million. The fee for voluntarily notifying a reviewable national security action is currently \$1,587.50, as this is 25 per cent of the fee that would have been payable for a business acquisition. However the rounding provision provides that the \$1,587.50 fee will be rounded up to \$1,588.

Items 17 to 19 make the necessary consequential amendments to provide for the new rounding provision, including updating headings in the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020*.

Item 22 provides that the amendments apply in relation to fees that become payable on or after the commencement of the instrument. Item 21 makes a consequential amendment to enable the insertion of the application provision.

Part 2 – Other amendments

Item 23 - Amendments to the *Foreign Acquisitions and Takeovers Regulation 2015*

Item 23 makes consequential amendments to the note at section 60 of the *Foreign Acquisitions and Takeovers Regulations 2015* to support a proposed amendment to the *Foreign Acquisitions and Takeovers Act 1975*. The proposed amendment is made by the Treasury Laws Amendment (Measures for Consultation) Bill 2021: Miscellaneous and Technical Amendments, and it provides that the Treasurer may extend the decision period by up to 90 days for exemption certificates.

Item 23 amends the note in section 60 of the *Foreign Acquisitions and Takeovers Regulations 2015* to reflect that the Treasurer's decision to grant an exemption certificate needs to be made before the end of 30 day period or the period extended under the Act.

Item 24 - Amendments to the *Business Names Registration Regulations 2011*

Item 24 amends section 13 of the *Business Names Registration Regulations 2011* to allow the Minister's powers to be delegated to certain people in the Australian Securities and Investments Commission (ASIC). Specifically the item includes the Minister's powers in sections 9(1) and (2) of the *Business Names Registration (Availability of Names) Determination 2015* as powers that can be delegated under section 80 of the *Business Names Registration Act 2011*.

Sections 9(1) and (2) of the *Business Names Registration (Availability of Names) Determination 2015* provides the Minister with the power to give written consent to the use of restricted words or expressions in relation to entities or businesses, or words or expressions that are similar to restricted words or expressions.

The amendment would allow these powers to be delegated by the Minister to an ASIC member, or to a senior staff member of ASIC. However, the powers can only be delegated to the extent that they are exercised in relation to a particular entity or business. This ensures that there is no sub-delegation of powers, and that only the Minister's administrative functions can be delegated.

The powers can only be delegated down to a senior staff member of ASIC. Senior staff members are generally 'senior executive service' employee equivalent. The ASIC Chairperson can identify which staff members are a 'senior staff member' in a legislative instrument. This ensures that only staff of sufficient seniority can be delegated the powers.