

## **EXPLANATORY STATEMENT**

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

*Corporations Act 2001*

*Foreign Acquisitions and Takeovers Act 1975*

*National Consumer Credit Protection Act 2009*

*Retirement Savings Accounts Act 1997*

*Superannuation (Unclaimed Money and Lost Members) Act 1999*

*Treasury Laws Amendment (Measures for Consultation) Regulation 2021:  
Miscellaneous and Technical Amendments No. 2*

Section 1364 of the *Corporations Act 2001*, section 139 of the of the *Foreign Acquisitions and Takeovers Act 1975*, section 329 of the *National Consumer Credit Protection Act 2009*, section 200 of the *Retirement Savings Accounts Act 1997* and section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* provides 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 (Measures for Consultation) Regulation 2021: Miscellaneous and Technical Amendments No. 2* (the Regulations) is to make minor and technical amendments in the Treasury portfolio, including to corporations law, laws relating to foreign acquisitions and takeovers, laws relating to consumer credit, and laws relating to superannuation.

Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, update references, correct unintended outcomes and improve the quality of laws. The amendments are part of the Government's commitment to the care and maintenance of Treasury portfolio legislation. 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make minor and technical changes that correct typographical and referencing errors, address unintended outcomes, update out of date references, and repeal inoperative provisions. These changes ensure that the Treasury regulations operate as intended.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out in Attachment A

Part 1 of Schedule 1 of the regulations commences the day after registration. Part 2 of Schedule 2 commences at the same time as the *Treasury Laws Amendment (Measures for Consultation) Act 2021: Miscellaneous and Technical Amendments No. 2*.

## **ATTACHMENT A**

### **Details of the Treasury Laws Amendment (Measures for Consultation) Regulation 2021: Miscellaneous and Technical Amendments No. 2**

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

Part 2 of Schedule 1 commences at the same time as Part 1 of Schedule 1 to the *Treasury Laws Amendment (Measures for Consultation) Act 2021: Miscellaneous and Technical Amendments No. 2*. However, Part 2 of Schedule 1 does not commence at all if that Part in the Act does not commence.

The Regulations are made under the *Corporations Act 2001*, *Foreign Acquisitions and Takeovers Act 1975*, *National Consumer Credit Protection Act 2009*, *Retirement Savings Accounts Act 1997* and the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

#### **Schedule 1 – Amendments**

##### **Part 1 – Amendments commencing day after registration**

###### **Items 1 – 10 – Amendments to the Corporations Regulations 2001**

Item 1 incorporates the ASIC Corporations (AFSL Audit Opinion) Instrument 2015/586 into the primary law). This instrument has the effect of inserting an omitted reference to Division 4A of the *Corporations Act 2001* to the list of provisions in section 7.8.13(2)(a)(i) of the *Corporations Regulations 2001*. The omission of the reference occurred when Division 4A of the *Corporations Act 2001* was inserted into part 7.8 of that Act in 2009. Item 1 inserts the reference to Division 4A of the *Corporations Act 2001* directly into section 7.8.13(2)(a)(i) of the *Corporations Regulations 2001*.

Items 2 and 3 remove the phone number and updates the website in sections 7.9.07FA(7A)(ca)(iii) and 7.9.14D(1)(c) of the *Corporations Regulations 2001* to <http://www.fcs.gov.au>. This is a result of updates to the contact details for the Australian Prudential Regulation Authority’s Financial Claims Scheme.

Items 4 to 10 have the effect of moving a longstanding ASIC class order into the *Corporations Regulations 2001*.

In 2010, the Government announced changes to the long-term performance superannuation disclosure reporting requirements for periodic statements to:

- exclude exit statements;
- allow the industry to use inserts to provide 5-year performance information for 1 more year up until 30 June 2011 rather than embed the information on the face of the periodic statement; and
- exempt “traditional funds (of an insurance nature)”.

The Government also announced they allow approved deposit funds and pooled superannuation trusts to provide annual reports online, consistent with the entitlement for regulated superannuation funds.

ASIC instrument CO 10/630 was made on 16 July 2010 to implement the announcements, pending the making of regulations. CO 10/630 has been amended six times to extend its operation, with the section imposing the time limit ultimately being removed in 2015.

The amendments provided by items 4 to 10 largely mirror CO10/630 in its amendment of sections 7.9.20AA and 7.9.75BA of the *Corporations Regulations 2001*.

Section 7.9.20AA sets out requirements for periodic statements for superannuation funds other than self managed superannuation funds. These requirements include requirements as to the content of the statements and the manner in which that content is expressed. There are different requirements applying to the period of 1 July 2009 to 30 June 2010 and applying from 30 June 2010 onwards.

The amendments exclude from those requirements the following circumstances:

- superannuation products that are non-investment or accumulation life insurance policies offered through the regulated superannuation fund;
- superannuation products that have no investment component; and
- periodic statements relating to a reporting period which starts at the end of a preceding reporting period and ends when the holder of a financial product ceases to hold the product.

The amendments also alter the periods in which the requirements differ. The first period now spans from 1 July 2009 to 30 June 2011 and the second period spans from 30 June 2011 onwards.

The amendments have the effect of:

- extending the period in which inserts may be used for providing a statement of long-term returns, from the period ending 30 June 2010 to the period ending in 30 June 2011; and
- delaying by one year (that is, moving from 30 June 2010 to 30 June 2011) the requirement to state long-term returns as the compound average effective rate of net earnings of the investment option for the period of 10 years ending at the end of the last financial year or reporting period before the provision of the periodic statement.

In relation to the period from 1 July 2009 until 30 June 2011, the amendments substitute the words “the period statement” for “a periodic statement”, to account for the fact that multiple periodic statements may have been sent during that period.

The amendments also extend the allowance to provide required information by publishing it online (previously available only to regulated superannuation funds) to approved deposit funds and pooled superannuation trusts.

#### Item 11 – Amendment to the *Foreign Acquisitions and Takeovers Regulations 2015*

Item 11 repeals section 66 of the *Foreign Acquisitions and Takeovers Regulation 2015*. The 2020 foreign investment reforms removed a restriction on the disclosure of protected information under the *Foreign Acquisitions and Takeovers Act 1975*. The reforms also repealed the then relevant section 62 of the *Foreign Acquisitions and Takeovers Regulation 2015*. Subsequently, the reforms also made an unrelated regulation using the number 62. However, section 66 was an application provision that applied to the former version of section 62. Therefore, it is now redundant. The repeal will prevent any issues with interpretation, especially as section 66 is unrelated to the content currently covered in section 62.

#### Item 12 – Amendment to the *National Consumer Credit Protection Regulations*

This item repeals certain out of date provisions.

Item 12 repeals section 65B of the *National Consumer Credit Protection Regulations 2010*. This section provided an exemption from section 16 of the National Credit Code in relation to a residential investment property and ceased to have effect on 1 October 2010.

Item 12 also repeals section 24A of the *National Consumer Credit Protection Regulations 2010*. This regulation provided an exemption for certain persons from responsible lending contract obligations under the *National Consumer Credit Protection Act 2009* and ceased to have effect on 1 April 2011.

Finally, the item repeals sections 69A and 69B of the *National Consumer Credit Regulations 2010*. These sections exempted certain persons from requirements to give certain notices that ceased to have effect from 2 March 2014.

#### Items 13 and 14 – Amendments to the *Retirement Savings Accounts Regulations 1997*

Item 13 repeals Division 2.2 of Part 2 of the *Retirement Savings Accounts Regulations 1997*. This Division prescribed information for the purposes of paragraph 52(2)(a) of the *Retirement Savings Account Act 1997*. Section 52 of the *Retirement Savings Account Act 1997* was repealed by the *Superannuation Legislation Amendment (Choice of Fund) Act 2004*, making Division 2.2 redundant.

Item 14 amends the reference in the note to section 2.18A of the *Retirement Savings Account Regulations 1997* as it previously referred to section 53 of the *Retirement Savings Account Act 1997*. Section 53 was repealed by the *Financial Services Reform (Consequential Provisions) Act 2001*. The reference in the note is therefore redundant and has been removed.

#### Item 15 – Amendment to the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*

Item 15 amends the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to ensure the recovery of overpayment in Part 4B of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* operates properly and consistent with the other recovery of overpayment provisions in that Act.

The amendments have the effect of requiring the Commissioner of Taxation to give a debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered. The regulations require certain information to be included in the notice.

**Part 2 – Amendments commencing at the same time as the Treasury Laws Amendment (Measures for Consultation) Act 2021**

Items 16 to 18 – Amendments to the *Corporations Regulations 2001*

Items 14 to 16 of the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Miscellaneous and Technical Amendments No. 2* updates references from ‘days’ to ‘business days’ in sections 946C and 1019B of the *Corporations Act 2001*.

The modification power in section 7.7.10AH of the *Corporations Regulations 2001* was used to modify the reference in section 946C of the *Corporations Act 2001* from calendar days to business days until the change could be made permanently in that Act. The effect of this modification was that time critical provision of a Statement of Advice(s) must occur within five business days of an additional service being provided, rather than within five calendar days. As a result of incorporating this amendment into the *Corporations Act 2001*, sub-sections 7.6.08(1) and (2) are repealed by item 16 and section 7.7.10AH of the *Corporations Regulations 2001* is repealed by item 17.

Section 1019B of the *Corporations Act 2001* was modified by section 7.9.15G of the *Corporations Regulations 2001*. The effect of this modification was that consumers’ cooling off rights start no later than the fifth business day after they acquire the product, rather than the fifth calendar day. As a result of incorporating this amendment into the *Corporations Act 2001*, section 7.9.15G of the *Corporations Regulations 2001* is repealed item 18.