

EXPOSURE DRAFT EXPLANATORY MATERIALS

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

Competition and Consumer Act 2010

Corporations (Aboriginal and Torres Strait Islander) Act 2006

Corporations Act 2001

Migration Act 1958

National Consumer Credit Protection Act 2009

Renewable Energy (Electricity) Act 2000

*Treasury Laws Amendment (Corporate Insolvency Reforms Consequential)
Regulations 2021*

Section 172 of the *Competition and Consumer Act 2010* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 633-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 1364 of the *Corporations Act 2001* (Corporations Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 504 of the *Migration Act 1958* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 329 of the *National Consumer Credit Protection Act 2009* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 161 of the *Renewable Energy (Electricity) Act 2000* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Regulations 2021* (the Regulations) make consequential amendments to the following regulations, which are necessary to support implementation of the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* and *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* (the corporate insolvency reforms), which commenced on 1 January 2021:

- *Competition and Consumer (Industry Codes – Franchising) Regulation 2014*
- *Competition and Consumer (Industry Codes – Oil) Regulations 2017*
- *Corporations Regulations 2001*
- *Migration Regulations 1994*
- *National Consumer Credit Protection Regulations 2010s*
- *Renewable Energy (Electricity) Regulations 2001*

The Regulations further amend the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* to modify the Corporations Act restructuring provisions so that they are tailored to the special risks and requirements of the Indigenous corporate sector, and enable an eligible company to adopt the simplified liquidation process.

The corporate insolvency reforms support small businesses by reducing the costs of external administration and the compliance burden for insolvency practitioners. The purpose of the Regulations is to ensure that these reforms are appropriately reflected across the Commonwealth statute book.

Consultation on the amendments to the *Corporations Regulations 2001* and the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* was undertaken from 23 April 2021 to 07 May 2021. Additional minor changes have been made to the *Corporations Regulations 2001* since the last consultation. No further changes have been made to the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017*.

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

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

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

Regulation Impact Statement

The Regulation Impact Statement for the corporate insolvency reforms was included in the explanatory statement for the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* (OBPR Ref: 25694).

Details of the *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Regulations 2021* (the Regulations).

Section 2 – Commencement

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

Section 3 – Authority

The Regulations are made under the following Acts:

- *Competition and Consumer Act 2010*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- *Corporations Act 2001*
- *Migration Act 1958*
- *National Consumer Credit Protection Act 2009*
- *Renewable Energy (Electricity) Act 2000*

Section 4 – Schedules

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

Schedule 1 – Amendments

Part 2 – Contingent amendments

Debt restructuring process for Aboriginal and Torres Strait Islander corporations

New Part 11-4A of the CATSI Act is established to give Aboriginal and Torres Strait Islander corporations access to the debt restructuring process by applying the Corporations Act *restructuring provisions* (that is, Part 5.3B of, and Schedule 2 to, the Corporations Act and other relevant provisions) to the CATSI Act.

Items 16 and 17

Items 16 and 17 modify the Corporations Act restructuring provisions so that they are tailored to the special risks and requirements of the Indigenous corporate sector. In particular, the modifications ensure that provisions concerning the power of courts are

replaced by the corresponding CATSI Act provisions, and certain terms are replaced by a corresponding term that is used in the CATSI Act.

Simplified liquidation process for Aboriginal and Torres Strait Islander corporations

For an eligible company to adopt the simplified liquidation process, a triggering event under section 489F of the Corporations Act must occur. A triggering event includes where a special resolution is passed under section 491 of the Corporations Act to wind up a company or in other circumstances such as when a voluntary administration process has terminated.

Item 18

Item 18 modifies the Corporations Act to ensure that an eligible Aboriginal and Torres Strait Islander corporation can enter the simplified liquidation process (in the same way as corporations incorporated under the Corporations Act) by passing a special resolution under section 526-20 of the CATSI Act. This is in addition to the other triggering events under section 489F of the Corporations Act.

Part 1 – Amendments

Corporate insolvency clarifications in relation to debt restructuring

Item 7

Item 7 removes references to insurance companies in relation to when the restructuring of a company ends. These provisions are no longer necessary, as entities regulated under the *Insurance Act 1973* and *Life Insurance Act 1995* are not eligible to access debt restructuring.

Item 8

Item 8 allows the restructuring plan to provide that the small business restructuring practitioner for a plan is taken to act as a company's agent when performing a function or duty, or exercising a power, in accordance with the restructuring plan. For example, the plan could provide that the small business restructuring practitioner acts as an agent of the company if they sell the company property, as required or permitted, to make payments to creditors under the plan.

Item 9

Item 9 repeals regulation 5.3B.40 of the *Corporations Regulations 2001* (Corporations Regulations), as it is replaced by item 8 of the Regulations.

Item 19

Item 19 of Part 2 repeals regulations 5.3B.10 and 5.3B.41 of the Corporations Regulations, as both are replaced by a single provision in the *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021* (specifically, proposed section 456LA of the Corporations Act), which provides qualified privilege to a small business

restructuring practitioner for a company and for a restructuring plan. This amendment is contingent on the enactment of section 456LA of the Corporations Act.

The repeal of regulation 5.3B.10 was added after the initial consultation period.

In addition, since the last consultation, the amendment to exempt a regulation 5.5.05 report from public disclosure has been removed as it is already being progressed in item 34 of Schedule 2 to the Bill.

Updating Commonwealth Regulations for debt restructuring

Items 1, 2 and 3

Item 1 updates subclause 4(2) in Schedule 1 to the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* to include the definition of a restructuring practitioner, as defined in the Corporations Act.

Item 2 amends subclause 17(5) of the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* to include the requirement that where a franchisor becomes a Chapter 5 body corporate the franchisor must notify the franchisee or prospective franchisee of the name and address of a small business restructuring practitioner within 14 days of the supplier becoming aware of the fact.

Item 3 provides that the amendments apply to a franchisor that becomes a Chapter 5 body corporate after commencement of Schedule 1 to the Regulations.

Items 4, 5 and 6

Item 4 updates Clause 4 in Schedule 1 to the *Competition and Consumer (Industry Codes – Oil) Regulations 2017* to include the definition of a restructuring practitioner, as defined in the Corporations Act.

Item 5 amends subclause 29(4) of the *Competition and Consumer (Industry Codes – Oil) Regulations 2017* to include the requirement that where a supplier becomes a Chapter 5 body corporate the supplier must notify the retailer or prospective retailer of the name and address of a small business restructuring practitioner within 14 days of the supplier becoming aware of the fact.

Item 6 provides that the amendments apply to a supplier that becomes a Chapter 5 body corporate after commencement of Schedule 1 to the Regulations.

Item 10

Regulation 2.84 of the *Migration Regulations 1994* requires an approved work sponsor to notify Immigration if any of the specified events in that section occur. Insolvency related events are specified in subregulations 2.84(3) and (4), in relation to a standard business sponsor (or party to a work agreement) and a professional development sponsor respectively. Paragraphs 2.84(3)(k) and 2.84(4)(h) provide identical lists of specific insolvency related events which must be notified to Immigration, including where a liquidator, administrator or receiver has been appointed under Chapter 5 of the Corporations Act.

Item 10 amends paragraphs 2.84(3)(k) and 2.84(4)(h) of the *Migration Regulations 1994* to specify that Immigration should also be notified if an approved sponsor appoints a small business restructuring practitioner for the company (but not where a small business restructuring practitioner is appointed to administer a restructuring plan, consistent with the current approach to deed of company arrangements). This is because the restructuring process is used by companies that are, or are about to be, insolvent.

Items 11 and 12

Item 11 updates subregulation 3(1) of the *National Consumer Credit Protection Regulations 2010* to include the definition of a restructuring practitioner, as defined in the Corporations Act.

Item 12 amends sub-regulation 20(3) to include a restructuring practitioner for a corporation or a corporation's restructuring plan among those listed as exempt from attaining an Australian credit license (ACL). This will ensure that a restructuring practitioner will not be required to be licensed when assisting a company that engages in credit activities, consistent with the treatment of other practitioners of insolvency processes.

Items 13, 14 and 15

The *Renewable Energy (Electricity) Act 2000* establishes a framework for renewable energy generators to create 'renewable energy certificates' which can be sold to purchasers of electricity. To create these certificates, a body corporate must first be registered under the Act. Regulation 3L of the *Renewable Energy (Electricity) Regulations 2001* prescribes matters to which the Regulator must have regard when determining whether an applicant is fit and proper to be registered. Paragraph 3L(1)(f)(iii) requires that the Regulator must consider whether the applicant is a body corporate that, overseas or under foreign law, is being wound up or under administration, among others.

Item 15 moves the contents of subparagraph 3L(1)(f)(iii) to new paragraph 3L(1)(g) and adds to the list of body corporates that, overseas or under foreign law, is in external administration. The amendment includes a body corporate that, overseas or under foreign law, is under restructuring or subject to a restructuring plan. This ensures that the Regulator can have regard to such corporations for the purposes of the fit and proper person test, consistent with the treatment of corporations undergoing other types of external administration overseas or under foreign law.

Items 13 and 14 repeal subparagraph 3L(1)(f)(iii), which is replaced by item 15.