

EXPOSURE DRAFT



EXPOSURE DRAFT

Treasury Laws Amendment (Modernising Business Communications) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg [DRAFT ONLY—NOT FOR SIGNATURE]
Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	2
	Schedule 1—Sending documents under the Corporations Act 2001	3
	<i>Corporations Regulations 2001</i>	3
	Schedule 2—Publication requirements	4
	<i>Corporations Regulations 2001</i>	4
	<i>Life Insurance Regulations 1995</i>	6
	Schedule 3—Other amendments	7
	<i>National Consumer Credit Protection Regulations 2010</i>	7
	<i>Superannuation Industry (Supervision) Regulations 1994</i>	7

EXPOSURE DRAFT

1 Name

This instrument is the *Treasury Laws Amendment (Modernising Business Communications) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Schedule 1 to the <i>Treasury Laws Amendment (Modernising Business Communications) Act 2021</i> .	
3. Schedule 2	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Part 1 of Schedule 3 to the <i>Treasury Laws Amendment (Modernising Business Communications) Act 2021</i> .	
4. Schedule 3	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Corporations Act 2001*;
- (b) the *Life Insurance Act 1995*;
- (c) the *National Consumer Credit Protection Act 2009*;
- (d) the *Superannuation Industry (Supervision) Act 1993*.

EXPOSURE DRAFT

4 Schedules

Each instrument that is specified in a Schedule to this instrument is 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.

EXPOSURE DRAFT

Sending documents under the Corporations Act 2001 **Schedule 1**

Schedule 1—Sending documents under the Corporations Act 2001

Corporations Regulations 2001

1 Regulation 5.1.02

Repeal the regulation.

2 Before regulation 6.5.01

Insert:

6.5.01A Sending information allowing access to documents to holders of securities

- (1) For the purposes of paragraph 648C(4)(b) of the Act, this regulation specifies requirements for sending information mentioned in paragraph 110D(1)(b) or (d) of the Act in relation to one or more documents (the *Chapter 6 documents*).
- (2) In addition to the information, the document (the *postcard*) that contains the information must include:
 - (a) information that identifies the bidder and the target; and
 - (b) a statement to the effect that the purpose of the postcard is to communicate how to access the Chapter 6 documents; and
 - (c) a statement to the effect that the holder has the right, under section 110J of the Act, to request a physical form of the Chapter 6 documents; and
 - (d) information on how the holder may make such a request.
- (3) The postcard must not contain any other information, except incidental information included for the purposes of sending the postcard.
- (4) The postcard must include the same information as any postcards sent to other holders of securities by the bidder in relation to the Chapter 6 documents, other than in relation to:
 - (a) the incidental information mentioned in subsection (3); and
 - (b) if some of those postcards are sent in a physical form, and others in an electronic form—any differences resulting from the differences in form of the postcards.

EXPOSURE DRAFT

Schedule 2 Publication requirements

Schedule 2—Publication requirements

Corporations Regulations 2001

1 Paragraph 5.6.75(1)(a)

Omit “or 5A.1”, substitute “, 5A.1 or 5B.2”.

2 Regulation 5D.1.01

Repeal the regulation, substitute:

5D.1.01 Prescribed requirements for publication

- (1) This regulation is made for the purposes of the definition of *publish* in section 601RAA of the Act.
- (2) ASIC must make a notifiable instrument setting out the contents of a notice mentioned in paragraph 601WBH(b) of the Act.

Note: The notice will be required to be published as a result of this subregulation, because after ASIC has lodged the notifiable instrument for registration under section 15G of the *Legislation Act 2003*, it will be required to be made available on a website in accordance with section 15C of that Act.
- (3) In addition, ASIC must publish a notice mentioned in paragraph 601WBH(b) of the Act on the ASIC website.
- (4) To avoid doubt, subregulation (3) expresses a contrary intention for the purposes of subsection 11(4) of the *Legislation Act 2003*.

3 Subregulation 7.5.30(5)

Omit “in each State and Territory in a daily newspaper circulating in that State or Territory”, substitute “in accordance with subregulation (5A)”.

4 After subregulation 7.5.30(5)

Insert:

- (5A) The notice is published in accordance with this subregulation if it is published in a manner that results in the notice being accessible to the public and reasonably prominent.

5 Subregulations 7.5.30(6) and (7)

Repeal the subregulations, substitute:

- (6) The applicable period must be a period that starts and ends before the day on which the notice is first published.
- (7) The last application day must be at least 3 months after the day on which the notice is first published.

6 Subregulation 7.5.56(4)

Omit “in each State and Territory in a daily newspaper circulating in that State or Territory”, substitute “in accordance with subregulation (4A)”.

7 After subregulation 7.5.56(4)

Insert:

- (4A) The notice is published in accordance with this subregulation if it is published in a manner that results in the notice being accessible to the public and reasonably prominent.

8 Subregulations 7.5.56(5) and (6)

Repeal the subregulations, substitute:

- (5) The applicable period must be a period that starts and ends before the day on which the notice is first published.
- (6) The last application day must be at least 3 months after the day on which the notice is first published.

9 Subregulation 7.5.61(4)

Omit “in each State and Territory in a daily newspaper circulating in that State or Territory”, substitute “in accordance with subregulation (4A)”.

10 After subregulation 7.5.61(4)

Insert:

- (4A) The notice is published in accordance with this subregulation if it is published in a manner that results in the notice being accessible to the public and reasonably prominent.

11 Subregulations 7.5.61(5) and (6)

Repeal the subregulations, substitute:

- (5) The applicable period must be a period that starts and ends before the day on which the notice is first published.
- (6) The last application day must be at least 3 months after the day on which the notice is first published.

12 Subregulation 7.5.70(1)

Omit “in each State and Territory, in a daily newspaper circulating generally in that State or Territory”, substitute “in accordance with subregulation (1A)”.

13 After subregulation 7.5.70(1)

Insert:

- (1A) The notice is published in accordance with this subregulation if it is published in a manner that results in the notice being accessible to the public and reasonably prominent.

14 Paragraph 7.6.02AA(4)(b)

Omit “on its internet website, and in a daily newspaper having national circulation”, substitute “, in accordance with subregulation (5)”.

EXPOSURE DRAFT

Schedule 2 Publication requirements

15 At the end of regulation 7.6.02AA

Add:

- (5) A proposal and direction mentioned in paragraph (4)(b) are published in accordance with this subregulation if they are published in a manner that results in the proposal and direction being accessible to the public and reasonably prominent.

16 Regulation 12.4.04 (heading)

Omit “in press”.

17 Subregulation 12.4.04(2)

Repeal the subregulation, substitute:

- (2) The notice must be published, at least 21 days before the day on which the meeting is to be held:
 - (a) unless paragraph (b) applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or
 - (b) if a determination under subregulation (4) is in force—in a manner specified in the determination.

18 At the end of regulation 12.4.04

Add:

- (4) For the purposes of paragraph (2)(b), ASIC may, by legislative instrument, make a determination specifying one or more manners in which a notice under this regulation may be published.
- (5) A manner of publication may be specified in the determination only if ASIC considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.

Life Insurance Regulations 1995

19 Regulation 9.01

Omit “regulation 9.02”, substitute “subsection 191(2A) of the Act”.

20 Subregulation 9.02(1)

Repeal the subregulation.

21 Subregulation 9.02(2)

Omit “A notice under subregulation (1)”, substitute “For the purposes of paragraph 191(2A)(c) of the Act, a notice of intention to make an application for confirmation of a scheme”.

22 Subregulation 9.02(3)

After “published”, insert “by the applicant under paragraph 191(2A)(b) of the Act”.

Schedule 3—Other amendments

National Consumer Credit Protection Regulations 2010

1 Subregulation 28L(3)

After “consent”, insert “(whether or not in writing)”.

2 At the end of subregulation 28L(3)

Add:

Note: The consent may be given, for example, by telephone or in person.

3 Subregulation 74(4)

Repeal the subregulation (not including the notes), substitute:

- (4) Unless the credit contract is to be signed by the debtor in an electronic form, the information and warnings mentioned in subregulation (1):
 - (a) are to be in the relevant form (including in the form of boxes); and
 - (b) must be set out immediately above, and on the same page as, each place in the contract document where the debtor (or at least one of the debtors) is to sign the contract document.
- (5) If the credit contract is to be signed by the debtor in an electronic form, all of the following apply in relation to the information and warnings mentioned in subregulation (1):
 - (a) the information and warnings under the heading “Before You Sign” in the relevant form must be set out immediately below that heading;
 - (b) the information and warnings under the heading “Things You Must Know” in the relevant form must be set out immediately below that heading;
 - (c) all aspects of the lettering of the information and warnings mentioned in paragraphs (a) and (b) of this subregulation, including the headings, must be in accordance with the relevant form (including in relation to any capitalisation or use of bold font);
 - (d) the information and warnings mentioned in subregulation (1) must be prominently displayed immediately before the place in the contract document where:
 - (i) the debtor is to sign the contract document; or
 - (ii) in the case of 2 or more debtors—each debtor is to sign the contract document.

4 Form 5 of Schedule 1

Omit “in a newspaper”, substitute “by your credit provider”.

Superannuation Industry (Supervision) Regulations 1994

5 Regulation 3A.05

Repeal the following definitions:

- (a) definition of *asset*;

EXPOSURE DRAFT

Schedule 3 Other amendments

- (b) definition of *asset value*;
- (c) definition of *statement of financial position*.

6 Regulation 3A.05 (note)

Repeal the note, substitute:

Note: The definition of *public offer entity licence* is contained in subsection 10(1) of the Act.

7 Regulation 3A.06 (table item 1, column headed “Application”)

Omit “items 2 to 7”, substitute “item 4, 6 or 7”.

8 Regulation 3A.06 (table items 2 and 3)

Repeal the items.

9 Regulation 3A.06 (table item 4, column headed “Application”, paragraph (b))

Omit “withdrawn; and”, substitute “withdrawn.”.

10 Regulation 3A.06 (table item 4, column headed “Application”, paragraph (c))

Repeal the paragraph.

11 Regulation 3A.06 (table item 5)

Repeal the item.

12 Regulation 3A.06 (table item 8, column headed “Application”, paragraph (a))

Omit “, and item 9 does not apply”.

13 Regulation 3A.06 (table item 9)

Repeal the item.