

EXPOSURE DRAFT

EXPOSURE DRAFT (27/07/2022)

Inserts for

Treasury Laws Amendment (Modernising Business Communications) Regulations 2022: Updating forms

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. Schedule 1	The later of: (a) the day after this instrument is registered; and (b) the day Schedule 1 to the <i>Treasury Laws Amendment (Modernising Business Communications) Act 2022</i> commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this instrument as originally made.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.

EXPOSURE DRAFT

Schedule 1—Updating forms

Australian Securities and Investments Commission Regulations 2001

1 Schedule 1 (Form 1)

Repeal the form, substitute:

Form 1—Notice requiring appearance at an examination or reasonable assistance in connection with an investigation

(regulation 4)

Australian Securities and Investment Commission Regulations 2001

Australian Securities and Investments Commission

NOTICE REQUIRING APPEARANCE AT AN EXAMINATION OR REASONABLE ASSISTANCE IN CONNECTION WITH AN INVESTIGATION

To: ¹

In relation to an investigation of ²

you are notified that under subsection 19(2) of the *Australian Securities and Investments Commission Act 2001* ('the Act') you are required:

(a) to appear at ³ on

⁴ at/using

⁵ before

⁶

for examination on oath or affirmation and to answer questions put to you in relation to the investigation; and

(b) to give the Australian Securities and Investments Commission all reasonable assistance in connection with the investigation.

Please note the provisions of subsection 23(1) of the Act (relating to legal representation) and section 68 of the Act (relating to self-incrimination). The effect of those provisions is set out at the end of this form.

Dated ⁴.

Signature of person authorised
by the Commission to conduct the
examination:

NOTICE OF RELEVANT STATUTORY PROVISIONS

1. Subsection 23(1) of the Act provides that a person who is required to submit to an examination is entitled to have his or her lawyer attend the examination. It also provides that the person's lawyer may address the inspector or ask the person questions about matters raised with the person by the inspector.
 2. (1) You must not fail to comply with this notice without reasonable excuse (see subsection 63(1) of the Act).
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EXPOSURE DRAFT

(2) It is not a reasonable excuse for failure to comply with this notice that giving information or signing a record or producing a book might tend to incriminate you or expose you to a penalty (see subsection 68(1) of the Act).

(3) However, if:

- (a) before making an oral statement or signing a record in answer to this notice you claim that making the statement or signing the record might tend to incriminate you or expose you to a penalty; and
- (b) making the statement or signing the record might in fact tend to incriminate you or expose you to a penalty;

the statement, or the fact that you have signed the record, is not admissible in evidence in any criminal proceedings, or proceedings for the imposition of a penalty, against you other than proceedings in respect of the falsity of the statement or the record.

(4) The right to make a claim of this kind is not available to a body corporate (see subsections 68(2) and (3) of the Act).

- 1 *insert full name and address of the person to whom the notice is to be given*
- 2 *insert the nature of the matter to which the investigation relates*
- 3 *insert time of day*
- 4 *insert date*
- 5 *insert full particulars of the address of the place at which the requirement is to be satisfied or details of the virtual enquiry technology to be used*
- 6 *insert full name of the person conducting the examination*

Corporations Regulations 2001

5 Schedule 1 (table item 3, column 4)

Omit “5249”, substitute “586”.

10 Schedule 2 (Form 5249)

Repeal the form.

15 In the appropriate position in Schedule 2

Insert:

Form 586

(subparagraph 206F(1)(b)(i))

Form 586

Corporations Act 2001

Subparagraph 206F(1)(b)(i)

Notice to demonstrate why disqualification should not occur

EXPOSURE DRAFT

IN THE MATTER of (1) _____

**Notice to demonstrate why disqualification should not occur
under section 206F of the Corporations Act 2001.**

To: (2) _____

The records of the Australian Securities and Investments Commission (ASIC) show that you are or were an officer of _____ (3) corporations that have been wound up, being _____ (4),

where a liquidator has reported under subsection 533(1) of the Corporations Act 2001 (the Act) that each of the corporations may be unable to pay its unsecured creditors more than 50 cents in the dollar.

In these circumstances you are required to demonstrate, in accordance with subparagraph 206F(1)(b)(i) of the Act, why you should not be disqualified from managing corporations.

Under subsection 206F(1) of the Act you may be disqualified from managing corporations for a period of up to 5 years.

In making a decision under subsection 206F(1) of the Act ASIC is required to give you an opportunity to be heard in relation to why you should not be disqualified from managing corporations.

AREAS OF CONCERN

ASIC has identified a number of concerns about your conduct which are described in Attachment "A".

The documents on which these concerns are based are listed in Attachment "B".

EXPOSURE DRAFT

OPPORTUNITY TO BE HEARD

If you wish to demonstrate why you should not be disqualified from managing corporations you should notify ASIC within 14 days from the date of service of this notice that you require an opportunity of being heard.

You may exercise your right to be heard by:

1. making a written submission;
2. appearing before a person ASIC has appointed to hear the matter (the delegate) and making submissions orally and appearing before the delegate to present evidence.

You may exercise your right by doing any or all of these options.

Once you have notified ASIC of your wish to demonstrate why you should not be disqualified a delegate will write to you with further details of the hearing procedure. The delegate will also inform you of the delegate's decision as to whether the hearing will take place at one or more physical venues and/or by means of virtual enquiry technology.

If you do not wish to demonstrate why you should not be disqualified, a decision will be made by a delegate on the information available.

If you wish to have access to the documents listed in Attachment "B" you should contact ASIC as soon as possible. Access to documents which are identified as "confidential" may be given subject to strict conditions of confidentiality.

Dated this _____ day of _____ 20_____

Signed _____

(5) Delegate of the Australian Securities and Investments Commission

Attachments

Attachment "A"
Areas of concern

EXPOSURE DRAFT

Attachment "B"

List of documents upon which concerns are based

DIRECTIONS

- (1) Insert name of person subject of the notice.
- (2) Insert name of person subject of the notice.
- (3) Insert number of corporations of which person was an officer.
- (4) Insert names and ACNs of corporations.
- (5) Insert full name of delegate signing the notice.

20 Schedule 2 (Form 588)

Repeal the form, substitute:

Form 588

(subparagraph 206GAA(1)(b)(i))

Form 588

Corporations Act 2001

Subparagraph 206GAA(1)(b)(i)

Notice to demonstrate why disqualification should not occur

IN THE MATTER of (1) _____

Notice to demonstrate why disqualification should not occur

under section 206GAA of the Corporations Act 2001.

To: (2) _____

The records of the Australian Securities and Investments Commission (ASIC) show that you are or were an officer of _____ (3) corporations that have been wound up, being _____ (4)

EXPOSURE DRAFT

where money was advanced for the purposes of paying the entitlements of employees of the corporations under the Fair Entitlements Guarantee Act 2012 and:

- the Commonwealth has received a minimal return, or no return on the advance; and
- ASIC has reason to believe that the Commonwealth is unlikely to receive more than a minimal return on the advance; and
- ASIC has reason to believe that either the corporations contravened the Corporations Act 2001 or Corporations (Aboriginal and Torres Strait Islander) Act 2006 and that the person failed to take reasonable steps to prevent the contravention or the person contravened the Corporations Act 2001 or Corporations (Aboriginal and Torres Strait Islander) Act 2006.

In these circumstances you are required to demonstrate, in accordance with subparagraph 206GAA(1)(b)(i) of the Act, why you should not be disqualified from managing corporations.

Under subsection 206GAA(1) of the Act you may be disqualified from managing corporations for a period of up to 5 years.

In making a decision under subsection 206GAA(1) of the Act ASIC is required to give you an opportunity to be heard in relation to why you should not be disqualified from managing corporations.

AREAS OF CONCERN

ASIC has identified a number of concerns about your conduct which are described in Attachment "A".

The documents on which these concerns are based are listed in Attachment "B".

OPPORTUNITY TO BE HEARD

If you wish to demonstrate why you should not be disqualified from managing corporations you should notify ASIC within 14 days from the date of service of this notice that you require an opportunity of being heard.

EXPOSURE DRAFT

You may exercise your right to be heard by:

1. making a written submission; or
2. appearing before a person ASIC has appointed to hear the matter (the delegate) and making submissions orally and appearing before the delegate to present evidence.

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Once you have notified ASIC of your wish to demonstrate why you should not be disqualified a delegate will write to you with further details of the hearing procedure. The delegate will also inform you of the delegate's decision as to whether the hearing will take place at one or more physical venues and/or by means of virtual enquiry technology.

If you do not wish to demonstrate why you should not be disqualified, a decision will be made by a delegate on the information available.

If you wish to have access to the documents listed in Attachment "B" you should contact ASIC as soon as possible. Access to documents which are identified as "confidential" may be given subject to strict conditions of confidentiality.

Dated this _____ day of _____

Signed

(5) Delegate of the Australian Securities and Investments Commission

Attachments

EXPOSURE DRAFT

Attachment "A"

Areas of concern

Attachment "B"

List of documents upon which concerns are based

DIRECTIONS

- (1) Insert name of person subject of the notice.
- (2) Insert name of person subject of the notice.
- (3) Insert number of corporations of which the person was an officer.
- (4) Insert names and ACNs of corporations.
- (5) Insert full name of delegate signing the notice.