

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

#### *Treasury Laws Amendment (Measures for Consultation) Regulations 2022*

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act 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 (Measures for Consultation) Regulations 2022* (the Regulations) is to simplify and rationalise the *Corporations Regulations 2001* in line with recommendations and other suggested improvements identified by the Australian Law Reform Commission (ALRC) in Interim Report A of its Review of the Legislative Framework for Corporations and Financial Services Regulation (ALRC Report 137).

Interim Report A, and the ALRC's Review more broadly, forms part of the Government's response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in 2019, which noted the law needed to be simplified to ensure its intent is met.

The Regulations clarify the meaning of defined terms, remove redundant definitions, and make broad improvements in relation to the use of definitions. These changes facilitate a more adaptive, efficient, and navigable legislative framework which help ensure that the legislative intent is met.

Consultation: with States and Territories under intergovernmental agreements (excl. GST).

Details of the Regulations are set out in Attachment A.

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

The Regulations commenced on the same date as Schedule 1 to the *Treasury Laws Amendment (Measures for consultation) Act 2022: ALRC Financial Services Interim Report Recommendations*.

There are no compliance costs or additional regulatory burdens associated with the Regulations.

**Details of the Treasury Laws Amendment (Measures for Consultation) Regulations 2022**

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Measures for Consultation) Regulations 2022* (the Regulations).

**Section 2 – Commencement**

Schedule 1 to the Regulations commences on the same date as Schedule 1 to the *Treasury Laws Amendment (Measures for consultation) Act 2022: ALRC Financial Services Interim Report Recommendations*.

**Section 3 – Authority**

The Regulations are made under section 1364 the *Corporations Act 2001* (the Act).

**Section 4 – Schedule**

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 – ALRC Financial Services Interim Report**

Item 1 inserts new sub-regulation 1.0.02(1) to define the terms ‘cash management trust interest’ and ‘quarter day’. The new sub-regulation facilitates navigability in the *Corporations Regulations 2001* (Corporations Regulations) by removing the need for a reader of the Corporations Regulations to refer to the Act to locate the meaning of these terms. The terms are not used in the Act and are repealed by the *Treasury Laws Amendment (Measures for consultation) Act 2022: ALRC Financial Services Interim Report Recommendations*.

Item 2 repeals regulation 7.1.02. This regulation modified the definition of ‘participant’ in section 761A of the Act. That definition is repealed by *Treasury Laws Amendment (Measures for consultation) Act 2022: ALRC Financial Services Interim Report Recommendations*.

Item 3 repeals regulation 7.1.07I. This is a spent regulation that provides that Australian carbon credit units and eligible international emissions units were not financial products, until 1 July 2012, from which point they became financial products.

Item 4 repeals regulation 7.6.02AGA. This regulation was directed at applying a transitional regime for providers of financial services in relation to carbon credit units, which commenced on 1 May 2012 and ceased operation 31 December 2012. This regulation has been superseded by the obligation to hold an AFS License.

Item 5 amends sub-regulation 9.12.02(6) to incorporate the substance of the definition of ‘Australian bank’ from the Act into the definition of ‘Australian entity’

in the Regulations. The term ‘Australian bank’ is not used within the Act and is only used as part of the definition of ‘Australian entity’ within the Regulations. Incorporating the definition of ‘Australian bank’ into ‘Australian entity’ clarifies the meaning of Australian entity and removes the unnecessary definition of ‘Australian bank’ from the Act.

Items 6 to 21 amend the heading of sections which contain a definition, so that these sections are named consistently with each other and consistently with definition sections in the Act. This will assist users with navigating through the instrument.

Item 22 amends the heading of regulation 1.0.17 so that the reference to ‘rules’ is now ‘rules of court’.

Item 23 amends the references to ‘rules’ in sub-regulations 1.0.17(1) and (2) to ‘rules of court’.

Items 24 to 28 amend paragraphs 5.4.01A(2)(a) and (b) and paragraph 5.6.43A(1)(b) to clarify that the terms ‘court rules’ and ‘rules’ refer to the ‘rules of court’.

Item 29 amends subparagraph 7.1.04(8)(b)(iv) to incorporate the definition of ‘rules’ previously found in sub-regulation 7.1.04(10). It provided that the term ‘rules’ refers to the rules of a market or clearing and settlement facility. This removes an unnecessary definition and makes subparagraph 7.1.04(8)(b)(iv) easier to read.

Item 30 repeals the definition of ‘rules’ from sub-regulation 7.1.04(10), and consequently the entirety of the *Corporations Regulations 2001*. The term ‘rules’ is defined for the purpose of one sub-regulation only and refers to the rules of a market or clearing and settlement facility. The substance of these rules has been included in subparagraph 7.1.04(8)(b)(iv), as outlined in the previous paragraph.

Item 31 amends Form 509H of Schedule 2 to clarify that the reference to ‘rules’ in this form is a reference to ‘rules of court’. Form 509H is used to make a statutory demand on a company under section 459E of the Act. This amendment only affects the form of statutory demands made after the date the Regulations commence.