

EXPLANATORY STATEMENT

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

Corporations Act 2001

Superannuation Industry (Supervision) Act 1993

Superannuation (Unclaimed Money and Lost Members) Act 1999

Foreign Acquisitions and Takeovers Act 1975

Income Tax Assessment Act 1997

National Consumer Credit Protection Act 2009

Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022

Section 1364 of the *Corporations Act 2001*, section 353 of the *Superannuation Industry (Supervision) Act 1993*, section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, section 139 of the *Foreign Acquisitions and Takeovers Act 1975*, section 909-1 of the *Income Tax Assessment Act 1997* and section 329 of the *National Consumer Credit Protection Act 2009* provide 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 (Miscellaneous and Technical Amendments) Regulations 2022* (the Regulations) is to make miscellaneous and technical amendments to regulations in the Treasury portfolio, including to corporations laws, tax laws, superannuation laws, laws relating to foreign acquisitions and takeovers, and laws relating to consumer credit. The amendments demonstrate the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct errors and unintended outcomes, make technical changes, and improve the quality 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 legislation. It has since been expanded to all Treasury legislation.

The Regulations amend various Treasury portfolio regulations to correct drafting errors and unintended outcomes, repeal inoperative provisions, and make other technical changes. These changes help maintain and improve the quality of Treasury portfolio legislation.

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

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The Authorising Acts specify no conditions that need to be met before the power to make the Regulations may be exercised.

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

Section 1 to 4 of the Regulations commence on the day after the Regulations are registered.

Schedule 1, Part 1 of the Regulations commence on the day after the Regulations are registered.

Schedule 1, Part 2, Division 1 of the Regulations commence on the day after the end of the period of 3 months beginning on the day the Regulations are registered.

Schedule 1, Part 2, Division 2 of the Regulations commence on the later of the day after it is registered on the Federal Register of Legislation and 1 October 2022.

Details of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2022* (the Regulations).

Section 2 – Commencement

Sections 1 to 4 of the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

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

Division 1 of Part 2 of Schedule 1 to the Regulations commences on the day after the end of the period of 3 months beginning on the day Regulations s registered on the Federal Register of Legislation.

Division 2 of Part 2 of Schedule 1 to the Regulations commences on the later of the day after the instrument is registered on the Federal Register of Legislation; and 1 October 2022.

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001*, *Superannuation Industry (Supervision) Act 1993*, *Superannuation (Unclaimed Money and Lost Members) Act 1999*, *Foreign Acquisitions and Takeovers Act 1975*, *Income Tax Assessment Act 1997*, and *National Consumer Credit Protection Act 2009*.

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 – Amendments

Part 1 – Amendments commencing on the day after registration

Division 1 – Takeovers

Items 1 and 2 update the *Corporations Regulations 2001* by removing references to repealed provisions of the *Corporations Act 2001* relating to telephone monitoring for takeover bids.

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Former Subdivision D of Division 5 of Part 6.5 of the *Corporations Act 2001* related to telephone monitoring during a takeover bid period. Subdivision D was repealed in 2007.

Prior to the making of the Regulations, Part 6.5 of the *Corporations Regulations 2001* contained a single provision, regulation 6.5.01, which prescribed financial thresholds and other specifics about telephone monitoring during the bid period of a takeover procedure. Item 1 repeals redundant Part 6.5 of the *Corporations Regulations 2001*.

Division 40 of Part 10.2 of the *Corporations Regulations 2001* contained transitional regulations 10.2.201 and 10.2.201A, which applied to telephone monitoring for takeover bids during certain periods. Item 2 repeals Division 40 as both regulations are now redundant.

Division 2 – Trustee companies

Item 3 amends the note the Schedule 8AA heading to correct a typographical error. Schedule 8AA details a list of trustee companies which are prescribed for the purposes of regulation 5D.1.01A. However, the previous description to the Schedule heading referred to regulation 5D.1.01, which dealt with an unrelated matter. Item 3 amends the note to the Schedule 8AA heading to refer to regulation 5D.1.01A, ensuring that readers are referred to the correct regulation.

Division 3 – Service of contravention notice

Item 4 repeals redundant regulation 11.02A of the *Superannuation Industry (Supervision) Regulations 1994*. The regulation prescribed how a notice may be served on the trustee of a fund under subsection 252B(1) of the *Superannuation Industry (Supervision) Act 1993*. This subsection was repealed by the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013*, making the regulation redundant.

Division 4 – Payment to a KiwiSaver scheme provider

Item 5 amends subsection 20(1) of the *Superannuation Industry (Unclaimed Money and Lost Members) Regulations 2019* to prescribe certain matters that must be satisfied before the Commissioner of Taxation can pay amounts to KiwiSaver scheme providers.

Due to legislative timing issues concerning when the amendment provided by item 5 could be made, there were previously no matters prescribed under section 22B of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for the purposes of a payment to a KiwiSaver scheme provider. This differed to other payments made by the Commissioner of Taxation to KiwiSaver scheme providers under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, which can only be made if the matters prescribed by regulations are satisfied.

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Division 5 – Prescribing public sector superannuation schemes

Items 6 and 7 update Part 7 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*.

The *Superannuation (Unclaimed Money and Lost Members) Act 1999* requires superannuation providers to report and pay certain amounts to the Commissioner of Taxation. Amounts received by the Commissioner of Taxation can then be paid to the persons entitled to them or paid into funds in which the member is active. The payment provisions in the Act generally do not apply to public sector superannuation schemes unless they are prescribed for that purpose. Part 7 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* lists prescribed public sector superannuation schemes.

Schedule 2 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* amended the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to provide for regulated superannuation funds to voluntarily pay amounts that they hold for a member to the Commissioner when it is in the best interest of that member (Part 3D of that Act). In response to invitation from the Commonwealth, the Governments of Northern Territory, Tasmania and South Australia have nominated public sector superannuation schemes to be prescribed under the new Part 3D of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. South Australia has also requested a scheme be prescribed for the purposes of Part 3A (payment of unclaimed superannuation of former temporary residents).

The table in section 16 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* lists prescribed public sector superannuation schemes eligible to pay unclaimed superannuation of former temporary residents to the Commissioner. Item 6 updates this list by adding the Electricity Industry Superannuation Scheme (established by the *Electricity Corporations Act 1994* (SA)) to the table.

Item 7 inserts section 17A to include a list of public sector superannuation schemes that are prescribed for the purposes of voluntary payments of other amounts to the Commissioner.

Division 6 – Continuous disclosure

Item 8 updates regulation 1.0.10 of the *Corporations Regulations 2001* by replacing a reference to repealed section 1001B of the *Corporations Act 2001* with a reference to sections 675 or 675A of that Act. The *Financial Services Reform Act 2001* repealed section 1001B of the *Corporations Act 2001*. Sections 675 and 675A of the *Corporations Act 2001* are the equivalent of former section 1001B.

Division 7 – Foreign Acquisitions and Takeovers Regulation 2015

Item 9 updates the note to the definition of ‘tenement’ in section 5 of the *Foreign Acquisitions and Takeovers Regulation 2015* to reflect that exploration tenement is now defined in section 4 of the *Foreign Acquisitions and Takeovers Act 1975*.

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The definition of ‘exploration tenement’ was added to section 4 of the *Foreign Acquisitions and Takeovers Act 1975* on 1 January 2021. At the same time, it was repealed from the *Foreign Acquisitions and Takeovers Regulations 2015*. No change to the definition itself was made.

Item 10 amends the note to section 16 of the *Foreign Acquisitions and Takeovers Regulation 2015* to clarify that section 16A of the *Foreign Acquisitions and Takeovers Act 1975*, and not regulation 5 of the *Foreign Acquisitions and Takeovers Regulation 2015*, defines ‘interest of a specified percentage in a business’.

Division 8 – Correcting cross-reference in the Income Tax Assessment (1997 Act) Regulations 2021

Item 11 updates subsection 31-15.07(2) of the *Income Tax Assessment (1997 Act) Regulations 2021* by replacing a reference to ‘section 31-15.05’ with ‘section 31-15.04’. This amendment corrects incorrect referencing.

Division 9 – Renumbering regulation of the Corporations Regulations 2001

Item 12 renumbers regulation 9.12.04 to 9.12.03A in the *Corporations Regulations 2001*. There were previously two regulations numbered as 9.12.04 in the *Corporations Regulations 2001*.

Division 10 – Court order copies

Item 13 repeals paragraphs 1.0.20(c) and (d) of the *Corporations Regulations 2001* to remove references to repealed sections 266 and 274 of the *Corporations Act 2001*.

Regulation 1.0.20 requires a person to provide ASIC with a copy of a court order if the order was given under certain sections within the *Corporations Act 2001*. These include sections 266 and 274. However, the *Personal Property Securities (Corporations and Other Amendments) Act 2010* repealed sections 266 and 274 of the *Corporations Act 2001*.

Division 11 – Repealing a subregulation of the Corporations Regulations 2001

Item 14 removes subregulation 5.3B.25(4) of the *Corporations Regulations 2001*.

Subregulation 5.3B.25(3) of the *Corporations Regulations 2001* makes it an offence for a person to unduly influence a creditor with the intention of affecting their acceptance or rejection of a restructuring plan. Subregulation 5.3B.25(4) categorises this offence as a strict liability offence, that is, one which does not require proof of fault.

However, paragraph 5.3B.25(3)(b) provides that the offence occurs when someone offers a form of enticement to the affected creditor with the intention of influencing their decision. As this characterisation clearly constitutes an element of fault, the offence is in fact not one of strict liability. Item 14 corrects this drafting oversight by removing subregulation 5.3B.25(4).

Division 12 – Consideration for acquisitions

Items 15 and 16 update subsection 14(4A) of the *Foreign Acquisitions and Takeovers Regulation 2015*.

Subsection 14(4A) provides that where a person acquires an interest in Australian land where there is a long-term lease, license or option involved giving right to occupy agricultural, commercial or residential land that is likely to exceed 20 years, the consideration pertaining to that acquisition is adjusted and apportioned to 20 years' worth of payments.

New paragraph 14(4A)(c) clarifies that adjustment of consideration under subsection 14(4A) only occurs where there is an agreement relating to the acquisition that sets out the value of the consideration and the parties to the agreement are dealing at arm's length.

This amendment ensures that consideration pertaining to acquisitions which are not at arm's length or do not have an agreement outlining a consideration are not adjusted under subsection 14(4A). Such acquisitions would require a reasonable assessment of the value of the consideration.

The amendment applies to any actions or proposed actions taken after the commencement of Schedule 1.

Part 2 – Amendments with other commencements

Division 1 – Special purpose funding entities

Part 3-2D of the *National Consumer Credit Protection Act 2009* includes three reverse mortgage protections that apply to Australian Credit License holders (or 'licensees'):

- Licensees are required to provide projections to a debtor that show the debtor's equity in the property that could be covered by a reverse mortgage.
- Licensees are required to make reverse mortgage information statements available on their website, and upon request.
- Licensees are to refrain from inaccurately using terms like reverse mortgaging when making relevant representations.

The *National Consumer Credit Protection Regulations 2010* include modifications to provisions in Chapter 3 of the *National Consumer Credit Protection Act 2009* and apply in relation to special purpose funding entities. However, some special purpose funding entities that provide reverse mortgages are not required to abide by the reverse mortgage consumer protections mentioned above, as they are not licensees.

Items 18 to 28 amend Schedule 3 of the *National Consumer Credit Protection Regulations 2010* to apply the consumer protections in relation to reverse mortgages to all special purpose funding entities, and not just licensees. The amendments also fix

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typographical errors present in a relevant definition, rectify editorial inconsistencies, and ensure consistency between definitions used in the *National Consumer Credit Protection Act 2009* and its regulations. Ultimately, the amendments ensure a level playing field by safeguarding consumers who avail a reverse mortgage regardless of the type of provider.

Division 2 – Employee share schemes

Item 29 removes a redundant reference in regulation 7.8.21A of the *Corporations Regulations 2001*. Previously, the regulation exempted eligible employee share schemes from the anti-hawking obligations contained in section 992A of the *Corporations Act 2001*, which prohibit a person from offering a financial product to a retail client in the course of unsolicited contact.

The reference was made redundant by changes provided by Schedule 4 to the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022* which removed the concept of an eligible employee share scheme from the *Corporations Act 2001*. Instead, the *Corporations Act 2001* now simply refers to employee share schemes, which remain exempt from the anti-hawking obligations (see subsection 1100ZC(8) in Schedule 4 to the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*).