

# EXPOSURE DRAFT EXPLANATORY MATERIALS

## **Issued by authority of the Assistant Treasurer**

*Competition and Consumer Act 2010*

*Corporations Act 2001*

*Superannuation Industry (Supervision) Act 1993*

*Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*

Section 172 of the *Competition and Consumer Act 2010* and section 353 of the *Superannuation Industry (Supervision) Act 1993* 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. Section 926B of the *Corporations Act 2001* provides that regulations may be made to omit, modify or vary specified provisions in Part 7.6 of the Corporations Act.

The purpose of the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018* (the exposure draft Regulations) is to make a number of miscellaneous amendments to the competition, corporations, and superannuation laws. These amendments are part of the Government's commitment to the care and maintenance of the statute book.

The amendments in the exposure draft Regulations correct technical and drafting defects, and remove anomalies and inoperative provisions in the *Competition and Consumer Regulations 2010*, the *Corporations Regulations 2001* and the *Superannuation Industry (Supervision) (Transitional Provisions) Regulations 1993*. They also ensure that the law operates as intended.

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

The enabling Acts do not specify any conditions that need to be satisfied before the power the Regulation may be exercised.

Sections 1 to 4 and Part 1 of Schedule 1 to the exposure draft Regulations commence on the day after the instrument is registered. Part 2 of Schedule 1 to the exposure draft Regulations commence on the later of the day after the instrument is registered and the day on which item 92 of Schedule 1 to the *Treasury Laws Amendment (Measures for a later sitting) Bill 2018: Miscellaneous Amendments* (exposure draft Bill) commences.

**Details of the Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018**

**Section 1—Name of the Regulations**

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*.

**Section 2—Commencement**

Sections 1 to 4 and Part 1 of Schedule 1 to the exposure draft Regulations commence on the day after the instrument is registered. Part 2 of Schedule 1 to the exposure draft Regulations commences on the later of the day after the instrument is registered and the day on which item 92 of Schedule 1 to the *Treasury Laws Amendment (Measures for a later sitting) Bill 2018: Miscellaneous Amendments* (exposure draft Bill) commences.

**Section 3—Authority**

The Regulations is made under the *Competition and Consumer Act 2010* (CCA), the *Corporations Act 2001* (Corporations Act) and the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

**Section 4—Schedules**

Section 4 provides that each instrument in a Schedule is amended or repealed as set out in the Schedule.

**Schedule 1—Part 1: Amendments commencing the day after registration**

***Item 1—Amendment to the Competition and Consumer Regulations 2010 (the Competition Regulations)***

Item 1 of Schedule 1 to the exposure draft Regulations inserts a new provision at the end of Part 6 of the Competition Regulations to provide the text that must be displayed on identity cards issued under section 133A of the CCA (the product safety provision).

Currently the Competition Regulations erroneously only provide the text that must be displayed on identity cards issued under section 154C of the CCA (the generic search and seizure provisions). The amendment enables greater accuracy and compliance with the legislation.

***Items 2 and 3—Amendments to the Corporations Regulations 2001 (the Corporations Regulations)***

Item 2 of Schedule 1 to the exposure draft Regulations modifies section 923C of the Corporations Act. Section 923C prohibits a person from using the terms ‘financial adviser’, ‘financial planner’ or a word of like import (‘the restricted words’) if the

person carries on a financial services business or provides a financial service and does not meet the education, training and professional standards in the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*. There are exceptions for persons that use a restricted word in relation to advice provided only to wholesale clients or in-house advice provided to their employer.

Item 2 ensures that this prohibition only applies where the person carrying on the financial services business or providing the financial service is an individual. This recognises that the education, training and professional standards apply only to individuals. Corporations cannot satisfy the education, training and professional standards and cannot become relevant providers.

The modified version of section 923C ensures that financial advice firms that employ relevant providers may continue to use restricted terms in their business names or advertisements, notwithstanding that the financial advice firm is not a relevant provider.

Item 2 applies from 1 January 2019 when the modified provision (section 923C) of the Corporations Act starts to apply.

Item 3 of Schedule 1 to the exposure draft Regulations corrects the grammatical error of using ‘a’ before the words ‘insurance financial services licensee’ in paragraph 7.8.08(17)(a) of the Corporations Regulations.

#### Schedule 1 – Part 2: Other amendments

##### *Item 4 – Repeal of the Superannuation Industry (Supervision) (Transitional Provisions) Regulations 1993 (SIS Transitional Regulations)*

Item 4 of Schedule 1 to the exposure draft Regulations repeals the SIS Transitional Regulations. The SIS Transitional Regulations were made under section 50 of the SIS Act and provided the ‘transitional superannuation fund conditions’ that were relevant to subsections 42(1AC), 42A(4), 50(1) and 50(2) of that Act.

Schedule 1 to the exposure draft Bill repeals section 50 of the SIS Act on the basis that it is no longer operative. Schedule 1 to that Bill also amends subsections 42(1AC) and 42A(4) to ensure that they apply to the transitional arrangements made under the former section 50. These changes mean that the SIS Transitional Regulations are no longer required and can be repealed.

The repeal of the SIS Transitional Regulations applies from the later of the day that this instrument is registered and the day on which item 92 of Schedule 1 to the exposure draft Bill commences. However, the repeal does not commence at all if that Bill never commences. This approach ensures that the SIS Transitional Regulations are not repealed before the amendments to the SIS Act facilitating the repeal come into effect.