

## **DRAFT EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing**

*Corporations Act 2001*

*Corporations (Aboriginal and Torres Strait Islander) Act 2006*

*Treasury Laws Amendment (Corporate Insolvency Reforms Consequential)  
Regulations 2021*

Section 1364 of the *Corporations Act 2001* (the Corporations Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Corporations Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Corporations Act.

Subsection 633-1(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the CATSI Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the CATSI Act.

The *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Regulations 2021* (the Regulations) make consequential amendments to the *Corporations Regulations 2001*, which are necessary to support implementation of the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* and *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* (the corporate insolvency reforms), which commenced on 1 January 2021.

The Regulations further amend the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* to: modify the Corporations Act restructuring provisions so that they are tailored to the special risks and requirements of the Indigenous corporate sector; and enable an eligible company to adopt the simplified liquidation process.

The purpose of the corporate insolvency reforms is to support small businesses by reducing the costs of external administration and the compliance burden for insolvency practitioners.

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 commence on the day after the instrument is registered.

### **Regulation Impact Statement**

The Regulation Impact Statement for these changes was included in the explanatory statement for the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*. OBPR Ref: 25694).

**Details of the Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Regulations 2021**

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Regulations 2021* (the Regulations).

**Section 2 – Commencement**

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

**Section 3 – Authority**

The Regulations are made under the *Corporations Act 2001* (Corporations Act) and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI 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 – Amendments**

**Debt restructuring process for Aboriginal and Torres Strait Islander corporations**

New Part 11-4A of the CATSI Act is established to give Aboriginal and Torres Strait Islander corporations access to the debt restructuring process by applying the Corporations Act *restructuring provisions* (that is, Part 5.3B of, and Schedule 2 to, the Corporations Act and other relevant provisions) to the CATSI Act.

**Items 1 and 2**

Items 1 and 2 modify the Corporations Act restructuring provisions so that they are tailored to the special risks and requirements of the Indigenous corporate sector. In particular, the modifications ensure that provisions concerning the power of courts are replaced by the corresponding CATSI Act provisions, and certain terms are replaced by a corresponding term that is used in the CATSI Act.

**Simplified liquidation process for Aboriginal and Torres Strait Islander corporations**

For an eligible company to adopt the simplified liquidation process, a triggering event under section 489F of the Corporations Act must occur. A triggering event includes where a special resolution is passed under section 491 of the Corporations Act to wind up a company or in other circumstances such as when a voluntary administration process has terminated.

### Item 3

Item 3 modifies the Corporations Act to ensure that an eligible Aboriginal and Torres Strait Islander corporation can enter the simplified liquidation process (in the same way as corporations incorporated under the Corporations Act) by passing a special resolution under section 526-20 of the CATSI Act. This is in addition to the other triggering events under section 489F of the Corporations Act.

### **Corporate insolvency clarifications in relation to debt restructuring**

#### Item 4

Item 4 removes references to insurance companies in relation to the debt restructuring process. These provisions are no longer necessary, as entities regulated under the *Insurance Act 1973* and *Life Insurance Act 1995* are not eligible to access debt restructuring.

#### Item 5

Item 5 allows the restructuring plan to provide that the small business restructuring practitioner is taken to act as a company's agent when performing a function or duty, or exercising a power, in accordance with the restructuring plan. For example, the plan could provide that the small business restructuring practitioner acts as an agent of the company if they sell the company property, as required or permitted, to make payments to creditors under the plan.

#### Item 6

Item 6 repeals sections 5.3B.40 and 5.3B.41 of the Corporations Regulations, as they are duplicative of the changes related to the small business restructuring practitioner acting as the company's agent, and providing qualified privilege to the small business restructuring practitioner.

### **Corporate insolvency clarifications in relation to simplified liquidation**

The purpose of the simplified liquidation process is to provide a quicker and cheaper pathway for less complex liquidations. For this reason, the corporate insolvency reforms replaced the section 533 report (an obligation under the full liquidation process) with a fit-for-purpose reporting process under section 5.5.05 of the Corporations Regulations. This reporting process requires a liquidator to submit a report to ASIC if the liquidator has reasonable grounds to believe offences have been committed.

#### Item 7

Item 7 clarifies that a section 5.5.05 report is exempt from public disclosure. This exemption power is delegated to regulations because it is undesirable to list a reference to the regulations in primary legislation. The scope of the regulation-making power has been delegated narrowly to ensure it is used appropriately.