

**TREASURY LAWS AMENDMENT (MODERNISING BUSINESS
COMMUNICATIONS) BILL 2021**

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investments Commission
Bill	<i>Treasury Laws Amendment (Modernising Business Communications) Bill 2021</i>
CCA	<i>Competition and Consumer Act 2010</i>
Corporations Act	<i>Corporations Act 2001</i>
Credit Regulations	<i>National Consumer Credit Protection Regulations 2010</i>
ETA	<i>Electronic Transactions Act 2009</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
NCC	National Credit Code
NCCPA	<i>National Consumer Credit Protection Act 2009</i>
PHIPSA	<i>Private Health Insurance (Prudential Supervision) Act 2015</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>

Chapter 1

Signatures, Sending Documents and Lost Member Relief

Outline of chapter

- 1.1 This chapter provides an overview of the changes that Schedule 1 makes to the Corporations Act in relation to:
- signing and executing documents electronically;
 - sending certain documents electronically; and
 - the introduction of relief for companies from sending documents to members whose contact details are known to be incorrect.
- 1.2 All references in this Chapter refer to the Corporations Act.

Context of amendments

1.3 The Corporations Amendment (Meetings and Documents) Bill 2021, which was introduced on 20 October 2021, proposes to amend the Corporations Act to allow:

- companies to sign and execute documents electronically or using wet-ink; and
- companies, responsible entities of registered schemes and disclosing entities to send meetings-related documents electronically or in hard copy.

1.4 Schedule 1 to the Bill expands the scope of these changes so that all documents under the Corporations Act can be signed electronically and certain additional categories of documents can be sent electronically and in hard copy.

1.5 The *ASIC Corporations (Uncontactable Members) Instrument 2016/187* provides relief to entities who would otherwise need to comply with sections 314(1) or 314A(1) of the Corporations Act, in certain circumstances. Sections 314(1) and 314A(1) require a relevant entity to send a hard copy of the entity's annual report to members who have elected to receive the report in this form.

1.6 Schedule 1 to the Bill amends the Corporations Act so that it incorporates this relief and expands the scope of the relief to encompass a larger number of documents.

Summary of new law

1.7 Schedule 1 to the Bill amends the Corporations Act to provide that:

- all documents which are required or permitted to be signed under the Corporations Act can be signed electronically or in wet-ink;
- documents sent under Chapters 2A to 2M, 5 to 5D, 6-6C, 6D, 8, 8A and 9 or Schedule 2 to the Act can be sent in either hard copy or electronic form; and
- companies are not required to send documents to a member where the contact details for that member are known to be incorrect.

Chapter 1 Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
All documents under the Corporations Act can be signed or executed electronically.	Only certain documents can be signed or executed electronically under the new global provisions in the Meetings and Documents Bill.
All documents in Chapters 2A to 2M, 5 to 5D, 6 to 6C, 6D, 8, 8A, 9 and Schedule 2 to the Act, other than those which are lodged with ASIC, the Registrar, or the Takeovers Panel, can be sent either electronically or in hard copy.	Only meetings related documents sent by companies, registered schemes and disclosing entities can be sent either electronically or in hard copy under the new global provisions in the Meetings and Documents Bill. Most other documents must be sent in hard copy.
A member of a company, registered scheme, disclosing entity or a notified foreign passport fund, and a holder of securities in the target for a bid can elect to receive documents in either hard copy or electronic form.	A member of a company, registered scheme or disclosing entity may elect to receive meetings related documents in either hard copy or electronic form.
The target of a takeover bid is required to additionally provide the bidder with the electronic and postal addresses of relevant security holders, if the target knows those addresses.	The target is required to provide the bidder with the postal addresses of relevant security holders.

<p>It is an offence for the bidder to misuse information about security holders which is provided by the target to the bidder.</p>	<p>No equivalent.</p>
<p>A person may object to a compulsory acquisition by signing the objection form and either returning it to the 90% holder or sending it to them in an electronic communication or in hard copy.</p>	<p>A person objecting to a compulsory acquisition is required to sign and return the objection form to the 90% holder in hard copy.</p>
<p>Entities do not have to send any documents in specified chapters to members if the entity knows that the members postal and electronic addresses are incorrect.</p>	<p>Entities do not have to send annual reports in hard copy to members if the entity knows that the members postal address is incorrect.</p>
<p>An entity must attempt to contact a member that it is no longer sending documents due to an incorrect address in the 12-month period following the point at which they stop sending that member documents.</p> <p>After the end of that 12-month period the entity has no obligation to attempt to contact the member, provided the conditions for the relief continue to apply.</p>	<p>An entity must send a notice to the address they possess in relation to the shareholder at least once a year for 6 years after they have fulfilled the conditions for the relief to apply.</p> <p>After that 6-year period the entity has no obligation to send further notices in relation to annual reports to that member.</p>

Detailed explanation of new law

Technology neutral signing and execution of documents

1.1 Schedule 1 to the Bill amends Part 1.2AA of the Corporations Act to provide that any document, including deeds, which are required or permitted to be signed by a person under the Corporations Act can be signed in wet-ink or electronically or by witnessing the fixing of a common seal in person or using electronic means. This includes documents signed by an agent on behalf of a company in accordance with section 126 of the Corporations Act and documents executed by a company in accordance with section 127 of the Corporations Act. *[Schedule 1, item 1, section 110]*

1.2 The rules for signing and executing documents which applied to documents covered by the Corporations Amendment (Meetings and Documents) Bill 2021 now apply to all documents which are required or

permitted to be signed by a person under the Corporations Act. This means that:

- a document will only be validly signed if it identifies the person signing the document, indicates their intention to be bound by the document and the method of signing is appropriate in all the circumstances;
- a person may sign or execute the document in one or more capacities by signing the document only once if that person's signature block states each capacity in which they are signing; and
- a document does not need to be signed on paper, parchment or vellum or meet common law delivery requirements to be validly executed.

1.3 ASIC or the Registrar cannot refuse to receive or register a document on the sole basis that it was signed or executed electronically. However, the Bill does not restrict the ability of ASIC or the Registrar to refuse to receive or Register documents for other reasons, including where the document does not meet the prescribed lodgement requirements (such as the requirements under Chapter 2P). *[Schedule 1, item 2, section 110B]*

Technology neutral requirements for sending documents

1.4 Specifically, the amendments provide that any document that is permitted or required to be sent under Chapters 2A to 2M, 5 to 5D, 6 to 6C, 6D, 8, 8A and 9 or Schedule 2 to the Act may be sent in any of the following ways:

- hard copy;
- electronically to an electronic address;
- by sending, in hard copy, details sufficient to enable the recipient to access the document electronically; or
- by sending, in electronic form, details sufficient to enable the recipient to access the document electronically.
[Schedule 1, item 4, sections 110C(1)-(3)]

1.5 The rules also apply where the words 'give', 'serve' or 'dispatch' are used instead of 'send'. *[Schedule 1, item 4, section 110C(6)]*

1.6 In addition to documents under the specified chapters, the rules for sending documents apply to classes of documents which are prescribed in the Regulations. *[Schedule 1, item 4, section 110C(4)]*

1.7 Companies, registered schemes and disclosing entities will continue to meet their obligations to send annual reports to members if

they make them readily accessible on a website. *[Schedule 1, item 5, section 110D(3)(a)]*

1.8 The rules do not apply to documents which are sent by, or to, ASIC, the Registrar or the Takeovers Panel. *[Schedule 1, item 4, section 110C(5)]*

Elections to receive documents in a particular form

1.9 The Bill also provides that, in addition to members of companies, registered schemes and disclosing entities, Australian members of a notified foreign passport fund and any other person prescribed in the regulations may elect to be sent documents in either hard copy or electronic form. This election can apply to all documents or a class of documents. *[Schedule 1, items 7 and 11, section 110E(1) and 110J(3)]*

1.10 As is the case in the Meetings and Documents Bill for elections made by members in relation to meetings related documents, to make an election a recipient must notify the sender that they wish to be sent one or more documents in either physical or electronic form. Unless the recipient making the election specifies otherwise, an election will take effect on the first business day after it is received by the sender and will continue to be in effect until it is withdrawn by the recipient.

1.11 If a member of a company elects to be sent all documents in a particular form then that election will also apply to any takeover related documents which are sent to the member by a bidder. *[Schedule 1, items 8 and 37, note to section 110E(3) and section 648CB]*

Notification of right to make an election

1.12 Public companies, responsible entities of registered schemes, disclosing entities and operators of foreign passport funds are obligated to notify members of their rights to make an election each year. A failure to comply with this obligation is a strict liability offence subject to 30 penalty units. *[Schedule 1, items 13-15 and 53, sections 110K(3)(a), (3A), (3B) and (4) and Schedule 3 to the Act]*

1.13 A strict liability offence is appropriate in this circumstance as it is necessary to strongly deter entities from failing to advise members of their rights to elect to receive a hard copy. The imposition of a strict liability offence reduces non-compliance by ensuring that ASIC can efficiently and expeditiously deal with low-level offending, thereby bolstering the integrity of the regime.

1.14 This strict liability offence meets all the conditions listed in the Attorney-General's Department's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. It does not exceed 300 penalty units for a body corporate and preserves the defence of honest and reasonable mistake of fact to be proved by the accused on the balance of probabilities.

Documents which relate to takeovers

1.15 The amendments apply to documents which are permitted or required to be sent under Chapters 6 or 6A of the Act. The Bill includes amendments to these chapters to facilitate the provision of documents to security holders by electronic means.

1.16 Section 641 of the existing law requires a company which is the target of a takeover bid under Chapter 6 to provide the bidder with the names and addresses of any person with a security interest in the bid class. The Bill amends the existing law to provide that a target must also provide the bidder with any electronic addresses of security holders covered by this provision and the details of any elections made by security holders to receive a document in a particular form which are in force. *[Schedule 1, items 33 and 34, section 641(1)(aa)-(ab) and 641(1C)]*

1.17 To provide safeguards against the misuse of the personal information by the bidder, the Bill introduces a civil penalty provision which applies to any misuse of information received under section 641. The contravention of the new civil penalty provision is punishable by 2,000 penalty units for an individual, or 10,000 penalty units for a body corporate. *[Schedule 1, items 35, 54 and 55, section 641A(1) and Schedule 3 to the Act]*

1.18 The use of a civil penalty provision in these circumstances is consistent with penalties for the disclosure of personal information in other Commonwealth laws. The introduction of a civil penalty provision provides a strong disincentive to the misuse of personal information, which may cause significant harm to the individuals to whom the information relates.

1.19 The existing law specifies that documents required or permitted to be sent under Chapter 6 must be sent to a holder of securities at the address shown for that person in the information provided to the bidder under section 641. The amendments clarify that this does not preclude the use of an electronic address to provide documents to a holder of securities under Chapter 6. *[Schedule 1, item 36, section 648B]*

1.20 The amendments also establish two new general provisions with the requirements for sending documents under Chapters 6 and 6A (including the rules relating to when a document is taken to have been sent). These provisions consolidate the existing requirements relating to when a physical document has been sent under Chapters 6 or 6A. The provisions also include a new rule which states that an electronic communication is taken to have been sent when it is received by the address. *[Schedule 1, items 37, 51, 56 and 57, sections 648C and 669A and Schedule 3 to the Act]*

1.21 It is necessary to provide legislative rules as to when a document is taken to have been sent under Chapter 6 due to the nature of the takeover process, which imposes strict deadlines on participants.

1.22 The amendments also repeal the existing rules for when a document is taken to have been sent under Chapter 6A. These provisions are no longer needed as the rules are set out in the new general provision. *[Schedule 1, items 38 to 50, sections 661B(3), 661B(4), 661D(1), 662B(3), 662B(4), 664C(4), 664C(5), 664E(1), 664E(2), 665B(3) and 665B(4)]*

1.23 An additional obligation is placed on a person who sends a document under Chapters 6 or 6A using an electronic communication method but receives a notification that the electronic communication is unable to be delivered. In these circumstances, a physical copy of the document must be sent to the address of the intended recipient, or given to them personally, within 3 days of receiving the notification. A failure to comply with this obligation is a strict liability offence subject to 30 penalty units. *[Schedule 1, items 37, 51, 56, 57, section 648CA and 669B and Schedule 3 to the Act]*

1.24 A strict liability offence is appropriate in this circumstance as it is necessary to deter participants in a takeover bid from providing documents to security holders on a selective or delayed basis. Further, the introduction of a strict liability offence is appropriate given the importance of ensuring a member has sufficient time to review, and respond to, the documents that should be provided to them as part of the takeover process.

1.25 This strict liability offence meets all the conditions listed in the Attorney-General's Department's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. It does not exceed 300 penalty units for a body corporate and preserves the defence of honest and reasonable mistake of fact to be proved by the accused on the balance of probabilities.

Lost members

1.26 The Bill provides relief from an obligation to send particular types of document under the Act provided certain conditions are met. *[Schedule 1, item 12, section 110JA(1)]*

1.27 The relief is only available where the person required to send the document (the sender) is a company, responsible entity or disclosing entity, and the recipient is a member of the sender.

1.28 The conditions which must be met before the relief is available are that:

- the sender has received notification, in relation to each of the addresses for the recipient that are known to the sender, that indicates the address is not current;

- the sender reasonably believes that none of those addresses are current; and
- the sender is unable, after exercising reasonable diligence, to ascertain a current address for the recipient; and
- the sender has taken reasonable steps to advise the recipient the sending of documents has been suspended but will be resumed if the recipient provides a current address.

[Schedule 1, item 12, section 110JA(3)-(4)]

1.29 In order to demonstrate that due diligence has been conducted in attempting to ascertain a current address for the member, the sender must have attempted to communicate with the recipient using all contact details for the recipient that are known to the sender. *[Schedule 1, item 12, section 110JA(4)]*

1.30 To facilitate attempts by the sender to ascertain the current address of the member, a sender is exempted from the obligation to adhere to a member's election if they reasonably believe that the address nominated by the member for the purposes of that election is not current. *[Schedule 1, item 10, section 110F(4A)]*

1.31 Although a sender may attempt to contact a member in a manner inconsistent with their election to receive documents in a certain form under section 110F, the sender will bear the evidential burden of establishing that they reasonably believed that the address for the member was not current.

1.32 Reversing the evidential onus in these circumstances is proportional, necessary, reasonable and in pursuit of a legitimate objective. The sender will have peculiar knowledge of whether they reasonably believed the address to no longer be current. For example, proof that an attempt was made to contact the member at their nominated address would be readily available to the sender. By reversing the onus of proof in these circumstances, the Bill clarifies that the relief provided for is only available in exceptional circumstances, and that a member's election must be complied with unless there is a reasonable belief that the address is not current.

Consequential amendments

- 1.33 Consequential amendments have also been made to:
- update the heading to Division 2 of Part 1.2AA to reflect the Parts expanded scope; *[Schedule 1, item 3, heading to section Division 2 of Part 1.2AA]*

- update the heading to section 110E to recognise that persons other than members may make elections; *[Schedule 1, item 6, heading to section 110E]*
- allow members of companies, registered schemes and disclosing entities to elect not to receive an annual report; *[Schedule 1, item 5, sections 110D(3)(a)]*
- preserve rules for foreign passport funds in relation to the provision of annual reports in English or the official language of the home economy of the fund and the right to make an election not to receive an annual report; *[Schedule 1, items 9 and 22, sections 110E and 314A(3)-(4)]*
- ensure that the rules for sending annual reports operate consistently with the new technology neutral rules for sending documents; *[Schedule 1 items 17-21, 25-28, sections 254P(2), 283EA(3)(b) and (c), 283EA(4), 314A, 315, 316A and 316AA]*
- enable members of companies limited by guarantee and notified foreign passport funds to make elections to receive an annual report in a particular form; *[Schedule 1, items 26-28, sections 316A and 316AA]*
- ensure that directors meetings can be held using any technology so long as it is reasonable; and *[Schedule 1, item 16, section 248D]*
apply the technology neutral sending rules to all insolvency documents. *[Schedule 1, items 29-32, sections 414 and 600G]*

Application and transitional provisions

1.34 The extension of the global communications and signatures regimes and the lost member rules commence on the later of the day after the Act receives Royal Assent and the commencement of the Corporations (Meetings and Documents) Bill 2021 (which inserts the new global regimes).

1.35 The rules for signing documents apply to documents signed on or after the commencement day. Similarly the rules for sending documents apply to documents which are sent on or after the commencement day and the rules relating to directors meetings apply to meetings which are called on or after the commencement day. *[Schedule 1, item 52, sections 1693-1693B and 1693D]*

1.36 The lost member rules apply only to document that:

- are required to be sent after commencement (even if they are sent before commencement); and
- where the sender receives a notice that the person's address is not a current address after commencement.

[Schedule 1, item 52, section 1693C]

1.37 This ensures that the new rules do not operate retrospectively.

1.38 Elections in relation to documents sent by Australian foreign passport funds and companies limited by guarantee which are in force immediately before the commencement day continue to be in force after commencement until withdrawn by the member. *[Schedule 1, item 52, sections 1693E and 1693F]*

Chapter 2

Credit and payments

Outline of chapter

- 2.1 This Chapter outlines the amendments that have been made to:
- allow credit providers to communicate with their customers and other persons under the *National Consumer Credit Protection Act 2009* (NCCPA) electronically in a greater range of situations; and
 - facilitate the greater use of electronic payments.

Context of amendments

2.2 The National Credit Code (NCC) contains a number of rules that require notifications by consumers to occur ‘in writing’. There are also provisions scattered across Treasury laws which require payments to be made at a particular place or otherwise restrict the method of payment.

2.3 This limits flexibility for both consumers and credit providers when updating contact details such as advising of nominated addresses for communication. It may also limit the use of electronic payments.

Summary of new law

2.4 The Bill allows a credit provider to send documents to either the last known physical or electronic address of the recipient, unless the recipient has nominated a specific address. There are safeguards to ensure that the recipient is notified before the sender can start sending documents to a different address to what they have done in the past.

2.5 The Bill also allows nominations, cancellations and other similar communications to be made in any appropriate manner (including electronically).

2.6 Finally, amendments are made to ensure digital payments are supported by the legislation.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Credit providers and other persons covered by the Credit Act must send documents to the address nominated by the recipient.</p> <p>If the recipient has not nominated an address, a credit provider can send a document to either the last known electronic or postal address of the recipient.</p> <p>The sender must notify the recipient if they intend to start to use a different address. Recipients can opt out of electronic communications.</p>	<p>Credit providers and other persons covered by the Credit Act must send documents to the last known postal address, unless the recipient has expressly nominated an electronic address.</p>
<p>Nominations, changes of nomination, and communications as to a preference not to receive electronic documents can all be made in any manner.</p>	<p>Nominations and changes and cancellations of nomination must be made in writing.</p>
<p>For a call on shares in a no liability company to be payable, the company is required to give notice to the shareholders of the amount of the call, when it is payable and the details for payment.</p>	<p>For a call on shares in a no liability company to be payable, the company is required to give notice to shareholders of the amount of the call, when it is payable and the place for payment. The notice must be sent by post.</p>
<p>The penalty imposed by an infringement notice under the <i>Excise Act 1901</i> may be paid in any way stated in the notice.</p>	<p>The penalty imposed by an infringement notice under the <i>Excise Act 1901</i> may be paid by delivery or postage to the place of payment stated in the notice, or in any other way stated in the notice.</p>
<p>There is no requirement for a deposit form.</p>	<p>The deposit form accompanying the deposit paid to the Commissioner of Taxation under Part 4 of the <i>Small Superannuation Accounts Act 1995</i> must include certain specifications as to the method of payment</p>

Detailed explanation of new law

Facilitating electronic communication in the credit law

2.7 The Bill amends the scheme for giving documents to allow for the greater use of electronic communication.

If a recipient has nominated an address, it must be used

2.8 Where a recipient has nominated an address, the giver is required to use that address. The nominated address may be electronic. *[Schedule 2, item 2, section 195(2)(a) of the NCC]*

2.9 A recipient can nominate an address in any appropriate manner, whether or not in writing. *[Schedule 2, item 2, section 195(6) of the NCC]*

If a recipient has not nominated an address

2.10 If a recipient does not have a nominated address, there are three methods for identifying the appropriate address. The appropriate method depends on what has occurred between the giver and the recipient in the past, as outlined below.

2.11 If the giver has never given a document to the recipient, the giver may send the document to the giver's choice of the last known physical address or the last known electronic address of the recipient. *[Schedule 2, item 2, section 195(2)(b) of the NCC]*

2.12 If the recipient is the operator of a business (for example, a lawyer or accountant), the physical address is the recipient's residence or place of business. If the recipient does not operate a business, the physical address is the recipient's place of residence. *[Schedule 2, item 2, section 195(2)(b) of the NCC]*

2.13 The recipient does not need to consent to receive documents electronically but they have a right to opt out. For this reason, paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* (which require consent) are disappplied. *[Schedule 2, items 1 and 2, sections 187 and 195(1) of the NCC]*

2.14 If the giver *has* previously given a document to the recipient, then they must continue to use the same address they used last time, unless and until they have notified the person of a change to the address. This ensures that there is only ever one 'active' address at a time, and a recipient will never be surprised by, or unaware of, a change in the address used. *[Schedule 2, item 2, section 195(2)(c) of the NCC]*

2.15 The notice of a change of address must contain a prominent statement to the effect that unless the recipient nominates another physical or electronic address, following the expiry of 14 days after the notice is given, the giver will give documents to the recipient at the address

specified in the notice. The notice must also inform the recipient that they may nominate an alternative physical or electronic address (to the one specified by the giver) at any time. *[Schedule 2, item 2, sections 195(2)(d), (8) and (9) of the NCC]*

Communication of a preference not to receive documents electronically

2.16 Recipients can opt out of receiving documents electronically. One way of doing this would be to nominate a physical address. However, some recipients may notify a giver that they do not want to receive documents electronically, without making a positive nomination of a physical address. In these circumstances, the recipient's notification is taken to be a nomination that the appropriate address is the last known place of residence of the recipient, or if the recipient operates a business, the last known place of the business. *[Schedule 2, item 2, sections 195(3), (4) of the NCC]*

2.17 Recipients can notify givers of their preference not to receive documents electronically in any appropriate manner, whether or not in writing. *[Schedule 2, item 2, section 195(6) of the NCC]*

Making, changing or cancelling nomination

2.18 The recipient can make, change or cancel their nomination of address at any time by notifying the giver. This can be done in any appropriate manner, whether or not in writing. *[Schedule 2, item 2, sections 195(5) and (6) of the NCC]*

2.19 If a recipient cancels their nomination, it no longer has effect. The appropriate address would therefore be determined by the scheme in relation to circumstances where there is no nomination. *[Schedule 2, item 2, section 195(7) of the NCC]*

Typographical correction

2.20 Item 3 corrects a typographical error in section 196(1)(c) of the National Credit Code. A document is taken to be given by electronic communication at the time that section 14A of the *Electronic Transactions Act 1999* provides is the time or receipt of the electronic communication. *[Schedule 2, item 3, section 196(1)(a) of the NCC]*

Technology Neutral Payments

2.21 The Bill also removes technologically prescriptive requirements relating to payments.

2.22 It removes the requirement for a no liability company to notify shareholders of the place of payment. This removes any uncertainty that companies can provide for any method of payment, including digital methods. The previous requirement to send the notice by post is also

omitted. *[Schedule 2, items 5 and 6, sections 254P(2) and 254P(2)(c) of the Corporations Act]*

2.23 Amendments are also made to allow penalties imposed by an infringement notice issued under the *Excise Act 1901* to be paid in any way specified in the notice. Formerly, payment needed to specify a place. *[Schedule 2, item 7, section 129C(2)(a) of the Excise Act 1901]*

2.24 Finally, the Bill repeals section 32 of the *Small Superannuation Accounts Act 1995*. This section required the deposit form accompanying the deposit paid to the Commissioner of Taxation under Part 4 of the *Small Superannuation Accounts Act 1995* to include certain specifications as to the method of payment. *[Schedule 2, item 8, section 32 of the Small Superannuation Accounts Act 1995]*

Application and transitional provisions

2.25 The amendments relating to credit apply to information, notices or other documents given from one month after the Act receives Royal Assent. This ensures that providers and other regulated entities have time to make administrative adjustments to their communication systems and protocols so that they can implement the added options provided by the amendments. *[Schedule 2, items 4]*

2.26 If a credit provider has given documents to a recipient before the commencement of the provisions and the recipient does not have a nominated address, they also need to notify the recipient before changing the address in the manner set out in paragraph 2.15 above. *[Schedule 2, item 4]*

2.27 The giver is also prohibited from using an electronic address (without first notifying the recipient in the manner set out in paragraph 2.15 above) if the recipient cancelled their nomination of an address before the commencement and did not nominate another address. This transitional requirement ensures that existing customers are not disadvantaged or taken by surprise. Under the rules in place before these reforms, recipients who had not made a nomination would have only received documents physically. *[Schedule 2, item 4]*

2.28 Nominations of an address made under section 195(1)(a) or (2)(a) of the National Credit Code prior to commencement continue in force after commencement. *[Schedule 2, item 4]*

2.29 The amendments relating to payments apply from the day after the Act receives the Royal Assent.

Chapter 3 Newspapers

Outline of chapter

3.1 This chapter explains the amendments that have been made to modernise existing requirements to publish notices in newspapers.

Context of amendments

3.2 Various Treasury portfolio laws require or permit notices to be published in newspapers.

3.3 Advances in technology and changes in public engagement mean that provisions requiring public notices in newspapers may no longer reach the intended audience in the most effective way.

Summary of new law

3.4 The Bill replaces provisions that require or permit notices to be published in newspapers with technology neutral rules. The amendments ensure the relevant notices are still published in manner which result in them being publicly available and reasonably prominent.

3.5 Generally, where a Commonwealth entity was previously required or permitted to publish a notice in a newspaper, the new law now permits the Commonwealth entity to publish the relevant notice in a manner that results in the notice being accessible to the public and reasonably prominent.

3.6 Generally, where a non-Commonwealth entity was required or permitted to publish a notice in a newspaper, the non-Commonwealth entity may now publish the relevant notice:

- in a manner that results in the notice being accessible to the public and reasonably prominent; and
- where required, in a manner determined by the relevant regulator.

3.7 The Bill also repeals a number of newspaper publication provisions, and associated provisions, which no longer serve any purpose.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Notices which were previously required or permitted to be published in newspapers can now be published in technology neutral manners.</p> <p>Generally, the notices must be published in a manner which results in them being accessible to the public and reasonably prominent.</p> <p>In certain instances, notices may need to be published in accordance with a manner determined by the relevant regulator. The regulator can only determine manners of publication which the regulator considers will result in the notices being accessible to the public and reasonably prominent.</p>	<p>Certain notices are required or permitted to be published in newspapers.</p>

Detailed explanation of new law

3.8 Schedule 3 to the Bill replaces newspaper publication requirements and permissions across Treasury Portfolio laws with technology neutral publication requirements and permissions.

3.9 Generally, the amendments ensure the relevant notices are published in a manner that allows the notices to be:

- accessible to the public and reasonably prominent, and
- if a regulator determination concerning the publication of the notice is in force, published according to the determination.

3.10 The intention is that the regulator would only make a determination if there were differences of opinion or uncertainty as to what was required for the notice to be reasonably prominent.

Competition and Consumer Act 2010

3.11 Various provisions in the *Competition and Consumer Act 2010* required the ACCC to publish certain notices in national newspapers. The provisions now require the regulator to publish the notices in a manner that results in the notices being accessible to the public and reasonably

prominent. *[Schedule 3, items 1 to 5, sections 28(2)(a), 44GA(10), 44LD(10), 44NC(10), 44ZZOA(10) of the Competition and Consumer Act 2010]*

Corporations Act 2001

Notices

3.12 Section 254Q of the Corporations Act concerns the forfeiture and sale of shares for a failure to meet a call on the shares. Notice of the sale of forfeited shares was previously required to be advertised in a national newspaper. Notice of the sale of forfeited shares, or the postponement of the sale of forfeited shares, must now meet the technology neutral publication requirements outlined in paragraph 3.9. *[Schedule 3, items 9 and 10, sections 254Q(3),(4), (5A)-(5C) of the Corporations Act]*

3.13 Sections 601WDA(1) and (3) of the Corporations Act contains rules about the cancellation of the Australian Financial Services Licence of a trustee company and voluntary transfer determinations under section 601WBA of the Corporations Act. The companies covered by these sections were previously required to publish certain notices in a national newspaper and on their website. The covered companies are now required to publish the notices on their website (if any) and according to the technology neutral publication requirements outlined in paragraph 3.9. *[Schedule 3, items 15, 16 and 17, sections 601WDA(1)(b) and 601WDA(3)-(6) of the Corporations Act]*

3.14 Sections 601CC and 601CL of the Corporations Act contain rules about the cessation of business of a registered Australian body and a registered foreign body, respectively. Liquidators of these bodies were previously required to publish notices in newspapers before making any distribution of the bodies' property.

3.15 Liquidators must now publish the notices in accordance with the technology neutral publication requirements outlined in paragraph 3.9. However, ASIC may determine that the notices must be published in the 'prescribed manner'. *[Schedule 3, items 11 to 14, sections 601CC(14)(a), 601CCA, 602CL(15)(a) and 601CLA of the Corporations Act]*

Miscellaneous Provisions

3.16 Section 103 of the Corporations Act concerns the effect of certain contraventions of the Corporations Act. As notices may now be published in a number of ways, references to specific manners of publication in the section are repealed. *[Schedule 3, item 8, section 103(2)(b) of the Corporations Act]*

3.17 The definitions of 'daily newspaper' and 'national newspaper' are repealed as newspaper references throughout the Corporations Act are repealed. *[Schedule 3, items 6 and 7, section 9 of the Corporations Act]*

3.18 Section 1070D of the Corporations Act contains rules about the loss or destruction of title documents for certain securities. The owner of

lost or destroyed title documents may apply to the relevant company for a duplicate title document.

3.19 Previously, the directors of the company could, before accepting the application, require the applicant to place an advertisement in a daily newspaper stating the title documents had been lost destroyed and the owner intended to apply for duplicate certificates. The directors can now specify the manner in which the notice is published. *[Schedule 3, item 18, sections 1070D(6)(a) of the Corporations Act]*

3.20 Section 1071D of the Corporations Act contains rules about the registration of the transfer of a security of a company at the request of transferor. Under the section, lists of certain documents could be advertised in such newspapers as the company thinks fit. The list of documents can now be published in a manner specified by the directors of the company, in addition to being published in the Gazette. *[Schedule 3, item 19, section 1071D(6)(b) of the Corporations Act]*

3.21 Clause 38 of Schedule 4 to the Corporations Act allows the regulations to modify the operation of that Act in relation to certain companies. A new subclause is inserted into clause 38 of Schedule 4 to ensure that ASIC has the power to specify how notices of company meetings are published. *[Schedule 3, item 20, clause 38(2A) of Schedule 4 to the Corporations Act]*

3.22 This regulation-making power is limited. It can only stipulate that ASIC has the power to determine how notices of meetings of a company's member are to be published. Further, it only applies to a small class of companies (mainly building societies, credit unions and friendly societies). It ensures that any additional requirements for publishing in paragraphs of the Act, where a manner for publication has not been prescribed, can be prescribed by ASIC. Where ASIC exercises this power, it must take the form of a legislative instrument and be published on the Federal Register of Legislation. Legislative instruments that ASIC publishes under this clause are subject to the usual safeguards, including sunseting and disallowance by Parliament.

Income Tax Assessment Act 1936

Serving notices

3.23 Section 45D of the *Income Tax Assessment Act 1936* concerns determinations made under sections 45A, 45B and 45C of that Act. Previously, the Commissioner of Taxation could serve a notice of a determination under section 45A by publishing the notice in certain daily newspapers. The Commissioner can now serve the notice by publishing the notice in a manner that accords with the technology neutral publication requirements outlined in paragraph 3.9. *[Schedule 3, items 21 and 22, section 45D(2) of the ITAA 1936]*

3.24 Section 177EA of the ITAA 1936 concerns the creation of franking debits and the cancellation of franking credits. Previously, if the Commissioner made a determination under section 177EA(5)(b) of that Act, the Commissioner could serve notice of the determination on each relevant taxpayer if the determination was published in certain daily newspapers. The Commissioner is now taken to have served the notice if it is published according to the technology neutral publication requirements outlined in 3.9. *[Schedule 3, items 23 and 24, section 177EA(7) of the ITAA 1936]*

Income Tax Assessment Act 1997

3.25 Under section 204-50(3) of the *Income Tax Assessment Act 1997*, if the Commissioner makes a determination denying an imputation benefit, the Commissioner was previously taken to have served notice of the determination if they published the notice in certain newspapers. The Commissioner is now taken to have served the notice if it is published according to the technology neutral publication requirements outlined in paragraph 3.9. *[Schedule 3, item 25, section 204-50(3) of the ITAA 1997]*

Insurance Act 1973

3.26 Section 29 of the *Insurance Act 1973* contains rules about the change of name of general insurers. Previously, a general insurer who changed its name had to place a notice of that fact in certain newspapers. Now, the general insurer must publish the notice in accordance with the technology neutral publication requirements outlined in paragraph 3.9. *[Schedule 3, items 26, 27 and 28, section 29(1), (2) and (3) of the Insurance Act 1973]*

Life Insurance Act 1995

3.27 Section 191 of the *Life Insurance Act 1995* previously required notice of an intention to make an application for confirmation of a scheme to be published in certain newspapers and elsewhere. This newspaper publication requirement is replaced with the technology-neutral publication requirements in paragraph 3.9. However, consistent with the previous publication rules in regulation 9.02 of the *Life Insurance Regulations 1995*, APRA can approve the form of the notice. *[Schedule 3, items 29, 30 and 31, sections 191(2)(b), (2A)-(2F) and 191(3) of the Life Insurance Act 1995]*

3.28 The operation of any forms approved by APRA under the previous regulation 9.02 of the *Life Insurance Regulations 1995* is preserved. Additionally, despite the amendments to paragraph 91(2)(b) of the *Life Insurance Act 1995*, the operation of regulations made for the purposes of that paragraph are preserved. *[Schedule 3, items 39 and 40, section 191(2) of the Life Insurance Act 1995]*

3.29 The amendments to section 191 commence on or after the commencement of Schedule 3. This is to ensure that notices published in accordance with the regulations prior to commencement of the Schedule

are valid and changes to notice requirements only apply after amendments to the Bill come into force. *[Schedule 3, items 38, section 191 of the Life Insurance Act 1995]*

3.30 Section 223 of the *Life Insurance Act 1995* previously required notice to be given of a company's intention to issue certain replacement policy documents. Repealing the notification requirements simplify the process for re-issuing replacement policy documents to consumers. *[Schedule 3, items 32 and 33, section 223(3) and (4) of the Life Insurance Act 1995]*

3.31 Section 224 of the *Life Insurance Act 1995* previously required notice to be given in relation to certain policy documents which were lost or destroyed. Repealing the notification requirements simplify the process for re-issuing replacement policy documents to consumers. The amendment is intended to allow insurers to be able to issue a copy of the life insurance policy either electronically or through post and reduce costs to both the insurer and consumer. *[Schedule 3, items 35, 36 and 37, sections 224(1)(b)(i), 224(1)(b)(ii), 224(2) and (3) of the Life Insurance Act 1995]*

National Consumer Credit Protection Act 2009

3.32 Section 64 of Schedule 1 to the *National Consumer Credit Protection Act 2009* concerns notification of interest rate changes by credit providers. Previously, credit providers were required to give notice of interest rate changes by publishing a notice in certain newspapers (if they elected not to notify the debtor directly). Credit providers are now required to publish notice of interest rate changes in accordance with the technology neutral publication requirements outlined in paragraph 3.9. *[Schedule 3, items 41, 42 and 43, sections 64(2), (3) and (8)-(10) of the NCC]*

3.33 Section 66 of Schedule 1 to the *National Consumer Credit Protection Act 2009* concerns notification of credit fees and charges changes. Previously, credit providers were required to give notice of such changes by publishing a notice in certain newspapers. Credit providers are now required to publish notice of the changes in accordance with the technology neutral publication requirements outlined in paragraph 3.9. *[Schedule 3, items 44 and 45, sections 66(2), (6)-(8) of the NCC]*

3.34 Section 119 of the National Credit Code contains provisions relating to application by credit providers or ASIC for court orders. Previously, the court could require notice of such applications to be published, in a form approved by the court, in certain newspapers. The court can now require notice of the applications to be published, in a form approved by the court, in a manner determined by the court. *[Schedule 3, item 46, sections 119(2) of the NCC]*

Private Health Insurance (Prudential Supervision) Act 2015

3.35 Section 20 of the *Private Health Insurance (Prudential Supervision) Act 2015* contains rules relating to private health insurers' applications to APRA for approval to convert to being registered as for-

profit insurers. Previously under this section, APRA could publish notices of the applications in certain newspapers. APRA can now publish notices of the applications in a manner which results in the notice being accessible to the public and reasonably prominent. *[Schedule 3, item 47, section 20(4)(a) of the Private Health Insurance (Prudential Supervision) Act 2015]*

3.36 Section 40 of the *Private Health Insurance (Prudential Supervision) Act 2015* contains rules relating to the conduct of funds during the “termination process”. Previously under this section, a private health insurer had to publish a notice in certain newspapers. Private health insurers are now required to publish the notice in accordance with the technology neutral publication requirements in outlined in paragraph 3.9. *[Schedule 3, items 48 and 49, section 40(2)(b) and 40(2A)-(2B) of the Private Health Insurance (Prudential Supervision) Act 2015]*

3.37 Section 75 of the *Private Health Insurance (Prudential Supervision) Act 2015* contains rules relating to the dealing of property of health benefits funds under management. Previously under this section, a manager of the fund could provide notice of an appointment in certain newspapers. The manager of the fund is now simply required to provide notice of the appointment to the relevant entity. *[Schedule 3, item 50, section 75(2)(b) of the Private Health Insurance (Prudential Supervision) Act 2015]*

Productivity Commission Act 1998

3.38 Section 13 and 14 of the *Productivity Commission Act 1998* required the Productivity Commissioner to provide notice of certain hearings and inquiries in newspapers. The Productivity Commissioner is now required to provide the notices in a manner that results in the notices being accessible to public and reasonably prominent. *[Schedule 3, item 51, sections 13 and 14 of the Productivity Commission Act 1998]*

Superannuation Industry (Supervision) Act 1993

3.39 Various amendments are made to the SIS Act to remove references to the licensing transition period. Provisions concerning the licensing transition period have been spent for several years and so are no longer needed. *[Schedule 3, item 52-57, sections 10(1), 29(CB), 29(CC)(1)-(2) and 29D(1)(h) of the SIS Act]*

3.40 Section 142 of the SIS Act contains rules relating to the winding-up or dissolution of superannuation entities. Previously under this section, APRA was required to advertise the making of instruments made under subsection (1) of the section in certain newspapers. APRA is now required to publish notice of the making of the instruments in a manner that results in the notice being accessible to the public and reasonably prominent. *[Schedule 3, item 58, section 142(7) and (9) of the SIS Act]*

Taxation Administration Act 1953

3.41 Section 260-145 of Schedule 1 to the *Taxation Administration Act 1953* requires the Commissioner of Taxation to publish notice of

certain determinations in newspapers. The Commissioner of Taxation is now required to publish the notice in a manner that results in the notice being accessible to the public and reasonably prominent. *[Schedule 3, item 59, section 260-145(3) of Schedule 1 to the Tax Administration Act 1953]*

Other minor amendments

3.42 Contingent amendments are also made to replace references to ASIC with the Registrar after the commencement of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*. That Act transfers the registry functions from ASIC to the Registrar. *[Schedule 3, items 60, 61 and 62, sections 254Q(5B)-(5C), 601CCA(2)-(3) and 601CLA(2)-(3) of Corporations Act]*

Application and transitional provisions

3.43 Most of the new rules relating to the publication requirements commence and apply on a date to be fixed by Proclamation. Where this date is not within 6 months on the day after the Act receives Royal Assent, the new rules will commence and apply on the day after the end of the 6 months. This will allow interconnected amendments to the Regulations to be commenced on the same day.

3.44 The contingent amendments commence at the later of the commencement of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* and the other provisions in this Schedule.

3.45 Saving provisions are also included to ensure the determinations continue to be in force when administration of the sections transfers from ASIC to the Registrar. However, if the Registrar has not amended or repealed the determination before the end of the period of 6 months after the transfer, the determinations are repealed at the end of that period. *[Schedule 3, item 63, sections 1694 and 1694A]*