

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Corporations Act 2001

Life Insurance Act 1995

National Consumer Credit Protection Act 2009

Superannuation Industry (Supervision) Act 1993

*Treasury Laws Amendment (Modernising Business Communications) Regulations
2021*

Section 1364 of the *Corporations Act 2001* (the Corporations Act), section 253 of the *Life Insurance Act 1995* (Life Insurance Act), section 329 of the *National Consumer Credit Protection Act 2009* (Credit Act) and section 353 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) 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 (Modernising Business Communications) Regulations 2021* (the Regulations) is to reduce regulatory burden and improve technology neutrality by amending requirements in Treasury laws that are consequential to the passage of the *Treasury Laws Amendment (Modernising Business Communications) Act 2001*. In particular, the Regulations ensure that certain documents can be sent in either physical or electronic form, amend prescriptive requirements to publish notices in newspapers and provide greater flexibility for the format of a consumer credit warning.

Improving the technology neutrality of Treasury portfolio laws will support business, regulators and individuals by providing greater flexibility and reducing costs when communicating with each other.

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

Details of the Regulations are set out in the Attachment.

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

Schedules 1 and 2 to the Regulations commence on the later of the day after the instrument is registered and the commencement of the relevant reforms in the *Treasury Laws Amendment (Modernising Business Communications) Act 2021*. Schedule 3 commences on the day after the instrument is registered.

Details of the *Treasury Laws Amendment (Modernising Business Communications) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Modernising Business Communications) Regulations 2021* (the Regulations).

Section 2 – Commencement

Schedules 1 and 2 to the Regulations commence on the later of the day after the instrument is registered and the commencement of the relevant reforms in the *Treasury Laws Amendment (Modernising Business Communications) Act 2021*. Schedule 3 commences on the day after the instrument is registered.

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001* (Corporations Act), *Life Insurance Act 1995* (Life Insurance Act), the *National Consumer Credit Protection Act 2009* (Credit Act) and the *Superannuation Industry (Supervision) Act* (SIS Act).

Section 4 – Schedules

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 – Sending documents under the Corporations Act 2001

Corporations Regulations 2001

Item 1 repeals regulation 5.1.02 of the Corporations Regulations to ensure that notices sent by companies to dissenting shareholders can be sent in both electronic and physical form.

Item 2 inserts a new regulation 6.5.01A that builds on the requirements for sending takeover documents to security holders in section 648C of the Corporations Act. Specifically, the regulation provides that if a person sends a takeover document by providing the security holder with a postcard, whether in hard copy or electronic form, with information that allows them to access the document electronically, that postcard must include:

- information that identifies the bidder and the target for the takeover;
- a statement that the purpose of the postcard is to communicate how the document can be accessed; and
- a statement that the security holder can request to be sent a hard copy of the document and information about how the security holder can make such a request.

The postcard cannot contain any additional information, other than incidental information which is necessary for the purposes of sending the postcard. This is intended to ensure that the sender of the postcard does not use the postcard as a means to advertise its business or contact security holders about unrelated matters. It is also expected that, where the postcard is sent as an attachment in an electronic communication, the electronic communication will refer only to the postcard and will not contain any additional information other than information which is incidental to sending the electronic communication.

Each postcard sent to security holders in respect of the same document must contain the same information, unless the information is incidental information or is the result of sending the postcard in a different form. This requirement is intended to ensure that each security holder is making decisions in respect of a takeover based on the same information and that no security holder has an advantage over another security holder due to being provided with additional or different information.

Schedule 2 - Publication requirements

Corporations Regulations 2001

Item 1 amends regulation 5.6.75(1)(a) of the Corporations Regulations to ensure amendments to sections 601CC and 601CL of the Corporations Act are effective. The amendments to the Corporations Act require the relevant notice to be published in a manner that results in the notice being accessible to the public and reasonably prominent and, if a relevant ASIC determination is in force, in a manner specified in the determination.

Item 2 repeals and replaces regulation 5D.1.01 of the Corporations Regulations. Regulation 5D.1.01 prescribed the manner of publication of certain notices under section 601WDA of the Corporations Act. As a result of amendments to section 601WDA of the Corporations Act, the manner of publication is now provided in section 601WDA. Accordingly, the content of regulation 5D.1.01, which prescribed the manner of publication, is repealed.

Items 3 to 13 replace newspaper publication permissions concerning the Securities Exchanges Guarantee Corporation (SEGC) with technology neutral publication permissions and make other associated amendments. Regulations 7.5.30, 7.5.56, 7.5.61 and 7.5.70 of the Corporations Regulations previously allowed the SEGC to publish certain notices in newspapers. The SEGC can now publish the notices in a manner that results in the notice being accessible to the public and reasonably prominent.

Regulations 7.5.30, 7.5.56, 7.5.61 previously accounted for instances where the notices might be published across multiple different newspapers and on different days. As this is no longer a possibility, the amendments provided by items 5, 8 and 11 clarify and simplify the drafting of the regulations.

Regulation 7.6.02AA(4)(b) of the Corporations Regulations previously required ASIC to publish certain proposals and directions on its internet website and in a daily newspaper having national circulation. The amendments provided by items 14 and

15 now require the proposals and directions to be published in a manner that results in the proposal and direction being accessible to the public and reasonably prominent.

Regulation 12.4.04 of the Corporations Regulations previously required certain bodies corporate to give notice of meetings by publishing the notice in certain newspapers. The amendments provided by items 16 to 18 now require the notice to be published in a manner that results in the notice being accessible to the public and reasonably prominent and, if a relevant ASIC determination is in force, in a manner specified in the determination.

Life Insurance Regulations 1995

Regulation 9.02 of the *Life Insurance Regulations 1995* previously required an applicant to the Court for confirmation of a scheme to publish a notice of intention to make the application, in a form approved by APRA, in the Gazette and certain newspapers. Amendments to the *Life Insurance Act 1995* have replaced this publication requirement with a technology neutral publication requirement. Accordingly, items 19 to 22 remove the publication requirement from regulation 9.02.

Schedule 3 – Other amendments

National Consumer Credit Protection Regulations 2010

Items 1 and 2 amend regulation 28L(3) of the *National Consumer Credit Protection Regulations 2010* (Credit Regulations) to clarify that a consumer may consent to the use of electronic communications by any means, including by telephone, in person or in writing.

Item 3 amends regulation 74(4) of the Credit Regulations to give credit providers more flexibility in the way they provide a consumer warning in digital product disclosure statements.

Item 4 updates one of the Forms to remove the reference to newspapers. This change is required as the *Treasury Laws Amendment (Modernising Business Communications) Act 2001* replaced the requirement to publish the notice in the newspaper with a requirement to publish it in any manner that is public and reasonably prominent.

Superannuation Industry (Supervision) Regulations 1994

Various amendments are made to the *Superannuation Industry (Supervision) Regulations 1994* to remove spent or redundant provisions relating to the “licensing transition period.”. Items 5 to 13 amend regulations 3A.05 and 3A.06 to accommodate amendments to sections 10, 29CB, 29CC, 29D and 142 of the SIS Act in the Treasury Laws Amendment (Modernising Business Communications) Bill 2021.

The amendments to the SIS Act remove references to the “licensing transition period”, which are no longer required. Previously, the SIS Act also required APRA to advertise the making of an instrument that formulates a scheme for the winding-up or dissolution of an entity. The SIS Act amendments now require APRA 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.