

EXPOSURE DRAFT

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for consultation) Bill 2022:
Rationalisation of ending ASIC
instruments**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1.		
2. Schedules 1 to 5	The day after this Act receives the Royal Assent.	
3.		

EXPOSURE DRAFT

Schedule 1—Voting control limits for proposed licensed trustee companies

Part 1—Amendments

Corporations Act 2001

1 Part 5D.5 (heading)

After “**licensed trustee companies**”, insert “**and proposed licensed trustee companies**”.

2 Section 601RAA

Insert:

proposed licensed trustee company means a company:

- (a) that is a trustee company, or a corporation to which paragraph 51(xx) of the Constitution applies that proposes to become a trustee company; and
- (b) that proposes to apply for an Australian financial services licence covering the provision of one or more traditional trustee company services.

3 Section 601VAA

Repeal the section, substitute:

601VAA Meaning of unacceptable control situation

For the purposes of this Part, an *unacceptable control situation* exists in relation to:

- (a) a licensed trustee company and in relation to a particular person; or
- (b) a proposed licensed trustee company and in relation to a particular person;

if the person’s voting power in the company is more than:

- (c) 15%; or
- (d) if an approval of a higher percentage is in force under Division 2 in relation to the company and in relation to the person—that higher percentage.

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1 **4 Subsection 601VBA(1)**

2 After “licensed trustee company”, insert “or proposed licensed trustee
3 company”.

4 **5 Paragraphs 601VBA(1)(a) and (b)**

5 Omit “trustee”.

6 **6 Subsection 601VBB(1)**

7 Omit all the words after “the Minister is satisfied that”, substitute:

8 : (a) in the case of a licensed trustee company—it would be in the
9 interests of that company and its clients for the application to
10 be granted; or

11 (b) in the case of a proposed licensed trustee company—it would
12 be in the interests of that company and its clients for the
13 application to be granted were that company a licensed
14 trustee company.

15 **7 Paragraphs 601VBB(2)(b) and 601VBB(4)(b)**

16 Omit “licensed trustee”.

17 **8 Subsection 601VBC(4)**

18 Omit all the words after “the Minister is satisfied that”, substitute:

19 : (a) in the case of a licensed trustee company—it would be in the
20 interests of that company and its clients for the application to
21 be granted; or

22 (b) in the case of a proposed licensed trustee company—it would
23 be in the interests of that company and its clients for the
24 application to be granted were that company a licensed
25 trustee company.

26 **9 Paragraphs 601VBC(7)(b) and 601VBD(7)(b)**

27 Omit “licensed trustee”.

28 **10 Paragraphs 601VBE(1)(a)**

29 After “licensed trustee company”, insert “or proposed licensed trustee
30 company”.

31 **11 Paragraph 601VBE(1)(b)**

32 Omit “trustee”.

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12 Subsection 601VBE(3)

Omit all the words after “the Minister is satisfied that”, substitute:

: (a) in the case of a licensed trustee company—it would be in the interests of that company and its clients for the application to be granted; or

(b) in the case of a proposed licensed trustee company—it would be in the interests of that company and its clients for the application to be granted were that company a licensed trustee company.

13 Subsection 601VBE(6)

Omit all the words after “the Minister is satisfied that”, substitute:

: (a) in the case of a licensed trustee company—the variation would be in the interests of that company and its clients; or

(b) in the case of a proposed licensed trustee company—the variation would be in the interests of that company and its clients were that company a licensed trustee company.

14 Paragraph 601VBE(9)(b)

Omit “licensed trustee”.

15 Subsection 601VBF(1)

After “licensed trustee company”, insert “or proposed licensed trustee company”.

16 Paragraph 601VBF(1)(a)

Omit all the words after “the Minister is satisfied that”, substitute:

: (i) in the case of a licensed trustee company—it would be in the interests of that company and its clients for the approval to be revoked; or

(ii) in the case of a proposed licensed trustee company—it would be in the interests of that company and its clients for the approval to be revoked were that company a licensed trustee company.

17 Paragraph 601VBF(1)(b)

Omit “trustee”.

18 Paragraph 601VBF(4)(b)

Omit “licensed trustee”.

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1 **19 Section 601VBH (heading)**

2 Omit “licensed trustee company and its clients”, substitute “the
3 company concerned and its clients”.

4 **20 Section 601VBH**

5 Omit all the words after “in relation to,”, substitute “a company, the
6 Minister may seek the views of the company concerned and its clients”.

7 **21 Paragraph 601VBI(3)(b)**

8 Omit “licensed trustee”.

9 **22 Subsection 601VBI(5)**

10 Omit “licensed trustee”.

11 **23 Section 601VCB**

12 Omit “licensed trustee”.

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Part 2—Repeals

ASIC Class Order [CO 12/340]

24 The whole of the instrument

Repeal the instrument.

EXPOSURE DRAFT

1 **Schedule 2—Information in a Financial**
2 **Services Guide given in a time critical**
3 **situation**

4 **Part 1—Amendments**

5 *Corporations Act 2001*

6 **1 Section 941E**

7 Repeal the section, substitute:

8 **941E Information must be up to date**

- 9 (1) The information in the Financial Services Guide must be up to date
10 as at the time when it is given to the client.
- 11 (2) However, if the Financial Services Guide is given to the client
12 under subsection 941D(4), the information in the Financial
13 Services Guide may be up to date as at the time the statement
14 referred to in that subsection is given to the client.

15 Note: A Supplementary Financial Services Guide containing updated
16 information may be given with a Financial Services Guide that has
17 become out of date. The updated information is taken to be included
18 in the Financial Services Guide (see section 943D).

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1 **Part 2—Repeals**

2 *ASIC Corporations (Financial Services Guide Given in a*
3 *Time Critical Situation) Instrument 2022/498*

4 **2 The whole of the instrument**

5 Repeal the instrument.

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Schedule 3—Product Disclosure Statement requirements for general insurance quotes

Part 1—Amendments

Corporations Act 2001

1 Subsection 1012A(4)

Repeal the subsection, substitute:

This section has effect subject to other provisions

- (4) This section does not apply to a regulated person for a recommendation situation if:
- (a) one or more of sections 1012D, 1012DA, 1012E, 1012F, 1012G or 1014E apply to a regulated person for that recommendation situation; and
 - (b) for each of those sections that so applies—the regulated person complies with the requirements (if any) in that section for that recommendation situation.

2 Subsection 1012B(5)

Repeal the subsection, substitute:

This section has effect subject to other provisions

- (5) This section does not apply to a regulated person for an issue situation if:
- (a) one or more of sections 1012D, 1012DAA, 1012E, 1012F, 1012G, 1012GA or 1014E apply to a regulated person for that issue situation; and
 - (b) for each of those sections that so applies—the regulated person complies with the requirements (if any) in that section for that issue situation.

3 Subsection 1012C(10)

Repeal the subsection, substitute:

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This section has effect subject to other provisions

- 1
2 (10) This section does not apply to a regulated person for a sale
3 situation if:
4 (a) one or more of sections 1012D, 1012DA, 1012E or 1014E
5 apply to a regulated person for that sale situation; and
6 (b) for each of those sections that so applies—the regulated
7 person complies with the requirements (if any) in that section
8 for that sale situation.

9 **4 After section 1012G**

10 Insert:

11 **1012GA Product Disclosure Statement for certain general insurance** 12 **product quotes may be provided later, or is not required**

- 13 (1) A regulated person, in making an offer to issue, or an offer to
14 arrange for the issue of, a general insurance product to a client,
15 may deal with the product under this section only if:
16 (a) the offer is made by or at the same time as giving a quote to
17 the client in the course of, or because of, a telephone call
18 with the client that is not unsolicited contact (within the
19 meaning of section 992A); and
20 (b) in the course of the phone call, but before the offer is made,
21 the regulated person orally communicates the following
22 information to the client in a clear, concise and effective
23 manner:
24 (i) if the insurance cover under the product is subject to
25 exclusions or limitations—that fact, and the fact that
26 information about those exclusions and limitations is
27 contained in the Product Disclosure Statement for the
28 product;
29 (ii) that the level of insurance cover under the product may
30 be different from the level of insurance cover under
31 other general insurance products; and
32 (c) the regulated person asks the client whether the client wants
33 to be given a Product Disclosure Statement for the product,
34 but does not influence the client's decision to elect to be
35 given the Product Disclosure Statement.
- 36 (2) In the course of the telephone call:
37 (a) if the client informs the regulated person that the client wants
38 to be given the Product Disclosure Statement—the regulated

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1 person must give the Product Disclosure Statement to the
2 client as soon as practicable after the time the offer is made;
3 or

4 (b) if the client informs the regulated person that the client does
5 not want to be given the Product Disclosure Statement—the
6 regulated person does not have to give the client the Product
7 Disclosure Statement in relation to the making of the offer.

8 Note: The regulated person may need to give a Product Disclosure
9 Statement to the client at or before the time specified in section 1012B
10 if, in the course of the telephone call or later, the client applies for, or
11 otherwise offers to acquire, the product, or the product is issued to the
12 client.

13 (3) In this section:

14 **quote** means, in relation to a general insurance product, a statement
15 of the cost (and not merely an estimate of the likely cost) of the
16 product if the cost is calculated by a regulated person having
17 regard to information given to them by a client.

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1 **Part 2—Repeals**

2 *ASIC Corporations (PDS Requirements for General*
3 *Insurance Quotes) Instrument 2022/66*

4 **5 The whole of the instrument**

5 Repeal the instrument.

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Schedule 4—Describing debentures as secured notes

Part 1—Amendments

Corporations Act 2001

1 Subsection 283BH(1) (after table item 2)

Insert:

2A secured note

only if:

- (a) the circumstances set out in subsection (4) are satisfied; and
- (b) in a case described in subsection 283BHA(1), (2) or (3)—the requirements set out in that subsection are satisfied

2 At the end of section 283BH

Add:

When debentures can be called secured notes

- (4) The borrower may describe or refer to the debentures as secured notes if:
 - (a) the repayment of all money that has been, or may be, deposited or lent under the debentures has been secured by a first ranking security interest in favour of the trustee over the whole or any part of the property of the borrower or of any of the guarantors; and
 - (b) the property that constitutes the security for the security interest is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities that:
 - (i) have been or may be incurred; and
 - (ii) rank in priority to, or equally with, that liability.

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1 283BHA Additional requirements for describing debentures as 2 secured notes

3 *Advertisements and publications*

- 4 (1) If the borrower proposes to describe or refer to the debentures as
5 secured notes in an advertisement or publication in relation to the
6 offer, or intended offer, of debentures that requires a disclosure
7 document—the borrower must ensure that the advertisement or
8 publication includes:
9 (a) a statement that the secured notes are not bank deposits; and
10 (b) a statement that there is a risk that investors could lose some
11 or all of their money.

12 *Disclosure documents and quarterly reports*

- 13 (2) If the borrower proposes to describe or refer to the debentures as
14 secured notes in a disclosure document or in a quarterly report
15 prepared under section 283BF—the borrower must ensure that the
16 disclosure document or quarterly report includes statements of the
17 following:
18 (a) key features of the security interest, including:
19 (i) that the security interest is first ranking; and
20 (ii) the type of security interest; and
21 (iii) the identity of the person providing the security interest;
22 and
23 (iv) the property constituting the security for the security
24 interest;
25 (b) that, in the borrower's assessment, the property that
26 constitutes the security for the security interest is sufficient
27 and is reasonably likely to be sufficient to meet the liabilities
28 referred to in paragraph 283BH(4)(b);
29 (c) if the value of the property that constitutes the security for
30 the security interest may be affected by the financial position
31 or performance of a related body corporate or related party of
32 the borrower—that fact.

33 *Borrower's website*

- 34 (3) If the borrower describes or refers to the debentures as secured
35 notes on its website—the borrower must ensure that the reports,
36 documents and notices mentioned in an item of the following table

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1 are published on the borrower's website in the period specified in
2 that item:
3

Publication requirements

Item	Document, report or notice	Period for publication
1	The most recent quarterly report prepared in relation to the borrower under section 283BF	As soon as practicable after a copy of the report is required to be lodged with ASIC
2	Each disclosure document (including any replacement or supplementary document) lodged with ASIC in relation to the borrower in the previous 13 months	As soon as practicable after a copy of the document is lodged with ASIC
3	Each continuous disclosure notice required to be lodged with ASIC under section 675 in relation to the borrower in the previous 12 months	As soon as practicable after the notice is required to be lodged with ASIC

4 (5) In this section:

5 *advertisement or publication*, in relation to an offer, or intended
6 offer, of debentures that requires a disclosure document, means:

7 (a) an advertisement for the offer or intended offer; or

8 (b) a publication of a statement that:

9 (i) directly or indirectly refers to the offer or intended
10 offer; or

11 (ii) is reasonably likely to induce people to apply for the
12 debentures.

13 *related party* has the meaning given by section 228.

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1 **Part 2—Repeals**

2 *ASIC Corporations (Describing Debentures—Secured Notes)*
3 *Instrument 2022/61*

4 **3 The whole of the instrument**

5 Repeal the instrument.

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Schedule 5—Notice requirements in the hardship provisions of the National Credit Code

Part 1—Amendments

National Consumer Credit Protection Act 2009

1 After subsection 72(4) of the *National Credit Code*

Insert:

(4A) Subsection (4) does not apply if the credit provider and the debtor agree to a change to the credit contract that defers or otherwise reduces the obligations of the debtor under that contract for a period not exceeding 90 days.

2 After subsection 73(1) of the *National Credit Code*

Insert:

(1A) Subsection (1) does not apply if the credit provider and the debtor agree to a change to the credit contract that defers or otherwise reduces the obligations of the debtor under that contract for a period not exceeding 90 days.

3 After subsection 177B(4) of the *National Credit Code*

Insert:

(4A) Subsection (4) does not apply if the lessor and the lessee agree to a change to the consumer lease that defers or otherwise reduces the obligations of the lessee under that lease for a period not exceeding 90 days.

4 After subsection 177C(1) of the *National Credit Code*

Insert:

(1A) Subsection (1) does not apply if the lessor and the lessee agree to a change to the consumer lease that defers or otherwise reduces the obligations of the lessee under that lease for a period not exceeding 90 days.

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1 *National Consumer Credit Protection (Transitional and*
2 *Consequential Provisions) Act 2009*

3 **5 After item 5 of Part 2 of Schedule 5**

4 Insert:

5 **5A Sections 72 and 73 of the new Credit Code**

6 *Item applies to credit contracts and consumer leases entered into*
7 *before 1 March 2013*

- 8 (1) This item applies in relation to credit provider and a debtor under a
9 credit contract (within the meaning of the new Credit Code):
10 (a) entered into before 1 March 2013; and
11 (b) for which the debtor applied to the credit provider in
12 accordance with former subsections 72(1) and (2) of the new
13 Credit Code (as in force before 1 March 2013).

- 14 (2) This item also applies in relation to a lessor and a lessee under a
15 consumer lease (within the meaning of the new Credit Code):
16 (a) entered into before 1 March 2013; and
17 (b) for which the lessee applied to the lessor in accordance with
18 former subsections 72(1) and (2), and former section 177, of
19 the new Credit Code (as in force before 1 March 2013);

20 in a corresponding way to the way this item applies to a credit provider
21 and debtor under a credit contract.

22 Note: Former section 177 of the new Credit Code (as in force before 1 March 2013) has the
23 effect that former sections 72 and 73 of that Code apply to consumer leases in the same
24 way as they apply to credit contracts.

25 *Notice requirements for changes to a credit contract or a*
26 *consumer lease on grounds of hardship do not apply in certain*
27 *circumstances*

- 28 (4) Former subsection 72(3) of the new Credit Code (as in force before
29 1 March 2013) does not apply if the credit provider and the debtor agree
30 to a change to the credit contract that defers or otherwise reduces the
31 obligations of the debtor under that contract for a period not exceeding
32 90 days.

- 33 (5) Former subsection 73(1) of the new Credit Code (as in force before
34 1 March 2013) does not apply if the credit provider and the debtor agree
35 to a change to the credit contract that defers or otherwise reduces the

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obligations of the debtor under that contract for a period not exceeding 90 days.

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1 **Part 2—Repeals**

2 *ASIC Class Order [CO 14/41]*

3 **6 The whole of the instrument**

4 Repeal the instrument.