

**EXPLANATORY STATEMENT**

**Issued by authority of the Assistant Treasurer and Minister for Financial Services**

*Business Names Registration Act 2011*

*Corporations Act 2001*

*Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022*

Sections 26, 27 and 28 of the *Business Names Registration Act 2011* provides that the Minister may, by legislative instrument, determine various matters relating to business names. Section 105-1 of the Insolvency Practice Schedule (Corporations) (contained in Schedule 2 of the *Corporations Act 2001*) provides that the Minister may, by legislative instrument, make rules for matters necessary or convenient to be provided in order to carry out or give effect to the Schedule.

The purpose of the *Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022* (the Instrument) is to make miscellaneous and technical amendments to two instruments in the Treasury portfolio. The amendments demonstrate the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct errors and unintended outcomes, make technical changes, and improve the quality of Treasury portfolio legislation. The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax legislation. It has since been expanded to all Treasury legislation.

The Instrument amends two Treasury portfolio instruments to correct drafting errors and unintended outcomes, repeal inoperative provisions, and make other technical changes. These changes help maintain and improve the quality of Treasury portfolio legislation.

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

The authorising provisions in the *Business Names Registration Act 2011* and *Corporations Act 2001* specify no conditions that need to be met before the powers to make the Instrument may be exercised. The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Section 48A of the *Legislation Act 2003* provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of section 48A, if the Instrument is not disallowed, the Instrument will automatically repeal when the disallowance period ends. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Instrument.

**ATTACHMENT A**

**Details of the Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022**

**Section 1 – Name of the Instrument**

This section states that the name of the Instrument is *Treasury Laws Amendment (Miscellaneous Amendments No. 1) Instrument 2022* (the Instrument).

**Section 2 – Commencement**

Section 2 of the Instrument sets out the commencement details of the Instrument.

**Section 3 – Authority**

This section states that the Instrument is made under the *Business Names Registration Act 2011* and *Corporations Act 2001*.

**Section 4 – Schedule**

This section provides that each instrument that is specified in the Schedule to the Instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to the Instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1 – *Business Names Registration (Availability of Names) Determination 2012***

Item 1 repeals the *Business Names Registration (Availability of Names) Determination 2012* (2012 Determination).

Section 26 and subsections 27(1) and 28(1) of the *Business Names Registration Act 2011* provides that the Minister may, by legislative instrument, determine identical, undesirable and restricted words and expressions for business names.

The 2012 Determination set out the following matters in relation to business names:

- rules for determining whether a business name is identical or nearly identical to another business name or to a name other than a company name;
- undesirable names; and
- words or expressions that are restricted.

In 2015, the *Business Names Registration (Availability of Names) Determination 2015* (2015 Determination) commenced operation. The 2015 Determination is also made under the *Business Names Registration Act 2011* and includes the same matters as contained in the 2012 Determination. The 2015 Determination did not repeal the 2012 Determination and the 2012 Determination remained in operation although it has been replaced by the 2015 Determination. The Instrument repeals the

2012 Determination as it is confusing for the 2012 Determination to be in operation when it is no longer current or relied on.

**Items 2, 3 and 4 – *Insolvency Practice Rules (Corporations) 2016***

Items 2 and 3 amend the heading of sections 75-140 and 75-145 of the *Insolvency Practice Rules (Corporations) 2016* to remove the words ‘of creditors’. Division 75 of the *Insolvency Practice Rules (Corporations) 2016* sets out the requirements for convening and holding meetings concerning companies during an external administration. Section 75-140 of the *Insolvency Practice Rules (Corporations) 2016* sets out the requirements for adjourning meetings during an external administration and section 75-145 sets out the requirements for taking minutes at meetings during an external administration. The reference to ‘of creditors’ in the heading of sections 75-140 and 75-145 have been removed to reflect that the sections relate to all meetings covered by the *Insolvency Practice Rules (Corporations) 2016* and not just meetings of creditors. The intention of items 2 and 3 is to ensure clarity about the types of meetings the sections apply to.

Item 4 removes the note from subsections 75-265(2) and (3) of the *Insolvency Practice Rules (Corporations) 2016*. Section 75-265 of the *Insolvency Practice Rules (Corporations) 2016* applies where creditors of an insolvent company pass a resolution at a meeting to remove the external administrator and appoint another person as the external administrator of the company. The note in subsections 75- 265(2) and (3) of the *Insolvency Practice Rules (Corporations) 2016* refers to three sections of the *Corporations Act 2001* which are not relevant to the situation in which section 75-265 applies.