# EXPOSURE DRAFT

# EXPLANATORY STATEMENT

## Issued by authority of the Assistant Treasurer

*Australian Securities and Investments Commission Act 2001*

*Corporations Act 2001*

*Financial Sector (Transfer and Restructure) Act 1999*

*Income Tax Assessment Act 1997*

*National Consumer Credit Protection Act 2009*

*Petroleum Resource Rent Tax Assessment Act*

*Products Grants and Benefits Administration Act 2000*

*Superannuation Industry (Supervision) Act 1993*

*Terrorism Insurance Act 2003*

*Treasury Laws Amendment (Measures for a Later Sitting) Regulations 2019*

Section 251 of the *Australian Securities and Investments Commission Act 2001*, section 1364 of the *Corporations Act 2001*, section 353 of the *Superannuation Industry (Supervision) Act 1993,* section 47 of the *Financial Sector (Transfer and Restructure) Act,* section 909‑1 of the *Income Tax Assessment Act 1997,* section 329 of the *National Consumer Credit Protection Act 2009,* section 114 of the *Petroleum Resource Rent Tax Assessment Act 1987,* section 60 of the *Product Grants and Benefits Administration Act 2000,* section 353 of the *Superannuation Industry (Supervision) Act 1993* andsection 43 of the *Terrorism Insurance Act 2003* provide that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019* (the Regulations) is to make miscellaneous amendments to regulations in the Treasury portfolio, including tax laws, corporations laws, superannuation laws and competition and consumer laws. The amendments are part of the Government’s commitment for the care and maintenance of Treasury portfolio legislation.

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

The Regulations amend various Treasury portfolio regulations to make minor technical changes that correct typographical errors and unintended outcomes, increase thresholds and repeal inoperative provisions. The Regulations amend the *Australian Securities and Investments Commission Regulations 2001,* the *Corporations Regulations 2001,* the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*, the *Financial Sector (Transfer and Restructure) Regulations 2018*, the *Income Tax Assessment Regulations 1997,* the *National Consumer Credit Protection Regulations 2010,* the *Petroleum Resource Rent Tax Assessment Regulation 2015,* the *Taxation Administration Regulations 2017,* the *Terrorism Insurance Regulations 2003* and the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019* to make minor technical changes that correct typographical errors and unintended outcomes, increase thresholds and repeal inoperative provisions.

Details of the Regulations are set out in the Attachment.

None of the Acts specify conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commence on the day after they are registered.

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

### ATTACHMENT

**Details of the Treasury Laws Amendment (Measures for a Later Sitting) Regulations 2019**

Sections 1 to 4 — Machinery provisions

Section 1 of the Regulations set out that the instrument is called the *Treasury Laws Amendment (Measures for a Later Sitting) Regulations 2019*.

Section 2 of the Regulations set out the commencement information for the Regulations. Sections 1 to 4, Part 1 of Schedule 1 and Schedules 2, 3 and 4 commence the day after the instrument is registered on the Federal Register of Legislation.

Part 2 of Schedule 1, which repeals the *Product Grants and Benefits Administration Regulation 2000*, commences the day after the instrument is registered or immediately after the commencement of the *Treasury Laws Amendment (Measures for a later sitting) Act 2019,* whichever is later. This ensures that the repeal takes effect at the same time as related amendments to the *Product Grants and Benefits Administration Act 2000*.

Section 3 of the Regulations set out that the Regulations are made under the *Australian Securities and Investments Commission Act 2001,* the *Corporations Act 2001*, the *Financial Sector (Transfer and Restructure) Act 1999*, the *Income Tax Assessment Act 1997*, the *National Consumer Credit Protection Act 2009*, the *Petroleum Resource Rent Tax Assessment Act 1987*, the *Product Grants and Benefits Administration Act 2000*, the *Superannuation Industry (Supervision) Act 1993* and the *Terrorism Insurance Act 2003*.

Section 4 of the Regulations set out that that items in the schedule to the Regulations amend or repeal each instrument that is specified in the schedule, and have effect according to their terms.

Schedule 1 — Amendments

**Item 1– Amendment to the *Australian Securities and Investment Commission Regulations 2001***

Item 1 repeals the note before Part 1 of the *Australian Securities and Investments Commission Regulations 2001* as it is no longer operative. The note referred to a commencement provision that has been repealed and to numbering used to assist in the transition from the *Australian Securities and Investments Commission Regulations 1990* to the *Australian Securities and Investments Commission Regulations 2001*.

**Items 2 to 7 – Amendments to the*****Corporations Regulations 2001***

Item 2 repeals regulation 7.1.06B to the *Corporations Regulations 2001*. This regulation is redundant as it is identical to another regulation (regulation 7.1.05).

Items 3 and 4 correct the spelling of ‘de facto’ in two provisions in the *Corporations Regulations 2001*.

Items 5, 6 and 7 add the phrases ‘Aboriginal and Torres Strait Islander Corporation’, ‘Indigenous Corporation’ and ‘Torres Strait Islander and Aboriginal Corporation’ to the list of phrases which require ministerial consent to be used in a company name.

**Item 8 – Amendment to the *Financial Sector (Transfer and Restructure) Regulations 2018***

Item 8 of the Regulations amends regulation 8 of the *Financial Sector (Transfer and Restructure) Regulations 2018* to increase the threshold for when a company is required to seek the Treasurer’s approval to hold a business. The threshold is increased from 15 to 20 per cent. This change is consistent with the changes to analogous thresholds in the *Financial Sector (Shareholdings) Act 1998* made by Schedule 1 to the *Treasury Laws Amendment (Financial Sector Regulation) Act 2018.*

**Items 9 and 10 – Amendments to the *National Consumer Credit Protection Regulations 2010***

Item 9 corrects an error in the table heading in regulation 86 of the *National Consumer Credit Protection Regulations 2010*. The table relates to ‘default notices’ but the heading mistakenly referred to ‘direct debit default notices’. Item 9 removes the reference to ‘direct debit’.

Item 10 removes the words ‘or comparison rate schedule’ from subsection 99(2) of the *National Consumer Credit Protection Regulations 2010*. Regulation 99 relates only to warnings about comparison rates in a credit advertisement. The reference to a comparison rate in a comparison rate schedule in subsection 99(2) was an error.

**Items 11 to 13 – Amendments to the *Taxation Administration Regulations 2017***

Items 11 to 13 give the force of law to treaty obligations relating to the service of documents in Article 17 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Items 11 and 12 allow the Commissioner to make arrangements with the proper officer of the Court to serve a document on a person at an address in a foreign country if the person is absent from Australia and does not have any agent in Australia on whom the document can be served. The Commissioner may also make arrangements to serve a document on a person at an address in a foreign country if the person cannot be found in Australia.

Item 13 gives the Commissioner the power to serve a document on a person at an overseas address if the person has not given the Commissioner an effective address for service, the person is absent from Australia and the person does not have an Australian agent who can take service. The service must be in accordance with an agreement between Australia and the foreign country that deals with the service of documents on tax matters.

**Items 14 to 18 – Amendments to the *Terrorism Insurance Regulations 2003***

Items 14 to 18 amend the *Terrorism Insurance Regulations 2003* to ensure that contracts of insurance that cover two or more buildings are subject to the reinsurance cover provided by the *Terrorism Insurance Act 2003* where the total sum-insured value of the buildings is $50 million or more. These changes apply irrespective of whether any of the buildings covered by the insurance contract is mainly a residential building.

The *Terrorism Insurance Act 2003* provides insurance cover for losses that are attributable to acts of terrorism. It achieves this by overriding terrorism exclusions in 'eligible insurance contracts' for losses attributable to terrorism, and providing reinsurance to the issuers of such contracts.

The definition of 'eligible insurance contract' is contained in section 7 of the *Terrorism Insurance Act 2003*. A regulation making power is included in that section which allows exceptions to the definition to be prescribed. Schedule 1 to the *Terrorism Insurance Regulations 2003* (through section 5 of the regulations) lists the types of insurance contracts that are excluded from the definition of 'eligible insurance contract'. Paragraphs 2(a) and (b) in Schedule 1 refer to contracts of insurance that provide cover for destruction or damage to a 'mainly residential building', or the contents of such a building. The effect of these provisions is that such insurance contracts are excluded from the reinsurance cover provided by the *Terrorism Insurance Act 2003*.

The term 'mainly residential building' is defined in section 3 of the regulations as a building that is used for residential purposes and that has a sum-insured value of less than $50 million. The definition does not apply to particular types of buildings (such as hotels or construction sites).

Paragraph 2(d) of Schedule 1 also refers to contracts of insurance that provide cover for loss or damage to personal property that is used for personal, domestic or household purposes, unless the personal property is part of the contents of a ‘residential part of a mixed-use or high-value building’. The term ‘mixed-use or high-value building’ is defined as the residential part of a building that is not mainly a residential building. The effect of paragraph 2(d) is that an insurance contract in respect of personal property in a mainly residential building is excluded from the reinsurance cover provided by the *Terrorism Insurance Act 2003*.

An insurance contract that provides cover for multiple buildings (for example, in respect of a residential strata scheme) and has a sum-insured value of $50 million or more may be inadvertently excluded from the definition of eligible insurance contract if one or more of the buildings covered by the contract is mainly a residential property. This outcome potentially arises because the criteria for excluding contracts in respect of mainly residential buildings in paragraphs 2(a) and (b) in Schedule 1 may be satisfied if the contract provides cover for a building that is mainly a residential building. A similar outcome may arise in respect of paragraph 2(d) in Schedule 1 through the reliance on the definition of ‘mainly residential building’ in the definition of ‘residential part of a mixed-use or high value building’.

These outcomes are not intended for contracts of insurance that provide total insurance coverage of $50 million or more for the destruction or damage to two or more buildings. In such cases, the insurance coverage provided for those buildings are intended to be treated in the same way as a building that is insured for $50 million or more (which are subject to the reinsurance cover provided by the *Terrorism Insurance Act 2003*).

The regulations address these issues by limiting the existing exceptions to the definition of 'eligible insurance contract' that are provided in paragraphs 2(a), (b) and (d) in Schedule 1. As a result, those exceptions are now explicitly prevented from applying to a ‘high-value multiple building contract’. The term ‘high value multiple building contract’ is defined as a contract of insurance that provides cover (whether restricted or not) for destruction or damage to two or more buildings if the total sum‑insured value of the buildings is $50 million or more.

The limits to the existing exceptions apply irrespective of whether the contract is also a contract that provides insurance cover in respect of the destruction or damage to a mainly residential building, loss or damage to the contents of a mainly residential building, or loss or damage to personal property that is not part of the contents of a residential part of a mixed-use or high value building.

As the limits to the exceptions are applied at the overall contract level, they do not apply to separate insurance contracts for buildings, or their contents, merely because those buildings are also covered by a high-value multiple building contract. This prevents, for example, an individual contract for insurance over the contents of an apartment building from being subject to the reinsurance cover provided by the *Terrorism Insurance Act 2003* merely because the apartment is separately covered by a high-value multiple building contract.

However, contents or personal property insurance can be covered by the definition of high-value multiple contract if the contents or personal property insurance is provided under the same contract that provides cover for the destruction or damage to two or more buildings that have a total sum-insured value of $50 million or more.

Item 15 provides that the amendments apply in relation to contracts of insurance made before, at or after the time those items commence. Although the amendments have some retrospective application in respect of existing insurance contracts, this outcome is wholly beneficial to persons affected by the amendments. This is on the basis that the amendments ensure that any exclusions for acts of terrorism contained in affected insurance contracts are overridden, and the providers of such contracts are provided with reinsurance cover under the *Terrorism Insurance Act 2003*.

**Item 19 – Repeal of the *Product Grants and Benefits Administration Regulations 2000***

Item 19 effects red-tape reduction by repealing the *Product Grants and Benefits Administration Regulation 2000*. This Regulation contains only one provision and that provision is being moved into the *Product and Benefits Administration Act 2000* by the Treasury Laws Amendment (Measures for a Latter Sitting) Bill 2019.

Item 19 commences from the later of the day when the Regulation is registered and the day when the *Treasury Laws Amendment (Measures for a later sitting) Act 2019* commences.

#### Item 20 - Amendments to the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*

Item 20 of the Regulations repeals regulations made under a transitional provision in the *Superannuation Industry (Supervision) Act 1993*. These regulations are redundant and as such their repeal does not have any practical effect.

Those regulations were made under, and specified conditions for, a redundant transitional provision in the *Superannuation Industry (Supervision) Act 1993*. The redundant transitional provision in the *Superannuation Industry (Supervision) Act 1993* was repealed in Schedule 4 to the *Treasury Laws Amendment (2019 Measures No. 1) Act 2019* (item 100).

Item 20 is made under the necessary and convenient power in the *Superannuation Industry (Supervision) Act 1993*.

Schedule 2 – Exempt special purpose funding entities

Schedule 2 corrects the misdescribed amendments in the *National Consumer Credit Protection Amendment Regulations 2010 (No. 3)*.

This regulation sought to amend regulations 20 to 24 of the *National Consumer Credit Protection Regulations 2010* to extend many of the exemptions from holding an Australian Credit Licence (credit licence) to certain persons engaging with exempt special purpose funding entities.

The amendments in the *National Consumer Credit Protection Amendment Regulations 2010 (No. 3)* could not be incorporated as there were spelling errors in the text that was to be omitted and substituted. For example, a proposed amendment to paragraph 20(11)(b) sought to replace ‘licensee or registered person’ with ‘licensee, registered person or exempt special purpose funding entity’. However, the words in paragraph 20(11)(b) were ‘licensee and registered person’. As paragraph 20(11)(b) did not contain the words that were to be replaced (‘licensee or registered person’), the amendment could not be made.

Items 1 to 11 correct the errors in the misdescribed amendments in the *National Consumer Credit Protection Amendment Regulations 2010 (No. 3)* so that they can be incorporated.

Once made correctly, the amendments exempt the following persons from holding a credit licence:

* certain organisations that provide services to members and allow their members to apply for, or obtain a benefit under, a particular credit contract or consumer lease offered by an exempt special purpose funding entity (where the other conditions in subregulation 20(11) are satisfied);
* certain debt collectors that are authorised to engage in the activity by an exempt special purpose funding (where the other conditions in subregulation 21(3) are satisfied);
* certain persons disseminating a document approved by an exempt special purpose funding entity (where the other conditions in subregulation 24(6) are satisfied);
* certain persons disseminating a business name, logo or trade mark approved by an exempt special purpose funding entity (where the other conditions in subregulation 24(7) are satisfied); and
* certain persons giving another person information about the cost of a credit contract or a consumer lease offer by an exempt special purpose funding entity (where the other conditions in subregulation 24(8) are satisfied).

Schedule 3 – Credit card contracts

Schedule 3 corrects misdescribed amendments relating to credit card contracts in the *National Consumer Credit Protection Amendment Regulations 2011 (No. 6*). It also makes other minor amendments to improve the readability of the provisions and ensure that they are consistent with modern drafting conventions.

**Item 1 – Regulation 28LB**

The item adds the words ‘for standard home loans’ at the end of the heading to regulation 28LB to enhance clarity.

**Item 2 –Regulations 28LBA to 28LBJ**

The *National Consumer Credit Protection Amendment Regulations 2011 (No. 6)* sought to insert various provisions which set out the requirements for Key Facts Sheet for credit card contracts, including:

* the content requirements for Key Fact Sheets (misdescribed regulation 28LBA);
* the requirement for the Key Fact Sheet to be hyperlinked in an application form (misdescribed regulation 28LBB);
* the circumstances in which application forms may include an out-of-date Key Fact Sheet (misdescribed regulation 28LBC); and
* the circumstances in which up-to-date information can be provided otherwise than in a Key Fact Sheet (misdescribed regulation 28LBD).

The *National Consumer Credit Protection Amendment Regulations 2011 (No. 6)* also sought to include various regulations relating to credit limits and fees and charges, namely:

* that a communication which includes a proposed credit limit higher than the consumer’s existing limit and suggests that the higher limit may benefit the customer is a ‘credit limit increase invitation’ and governed by section 133BE of the Credit Act (misdescribed regulation 28LBE);
* a requirement for a licensee to notify a consumer if the consumer exceeds their credit limit (misdescribed regulation 28LBF);
* mandatory requirements for licensees that invite a consumer to consent to fees, charges or a higher interest rate (misdescribed regulation 28LBG);
* a requirement for a licensee to keep a record of when the consumer consented or withdrew their consent to fees, charges or a higher interest rate (misdescribed regulation 28LBH);
* the information that must be provided when a consumer enters into an agreement that allows the licensee to apply certain credit card payments against a particular amount (misdescribed regulation 28LBI).

These amendments never had effect because they were to be inserted after a provision that did not exist at the time.

Item 2 corrects this by inserting provisions 28LBA to 28LBI after regulation 28LB of the *National Consumer Credit Protection Regulations 2010.*

Some of the provisions have been redrafted from the form proposed in the *National Consumer Credit Protection Amendment Regulations 2011 (No. 6)*. These minor changes are designed to increase clarity and ensure that the provisions are consistent with current drafting conventions.

**Item 3 – Schedule 5 to the *National Consumer Credit Protection Regulations 2010***

Item 3 adds the words ‘for standard home loans’ at the end of the heading for Schedule 5. This is designed to enhance clarity by differentiating the content in Schedule 5 (Key Facts Sheets for standard home loans) from the content in Schedule 6 (Key Facts Sheets for credit card contracts).

**Item 4 – Schedule 6 to the *National Consumer Credit Protection Regulations 2010***

Item 4 amends the note to Schedule 6 so that it instead refers to new provision 28LBA.

Schedule 4 – Small amount credit contracts

Schedule 4 corrects the section numbering in the provisions relating to small amount credit contracts in Part 3.5 of the *National Consumer Credit Protection Regulations 2010*.

**Items 1 to 8 and 12 to 16 – Regulations 28LCA to 28LCF**

The *National Consumer Credit Protection Amendment Regulation 2012 (No. 4)* inserted regulations 28XXA to 28XXF between regulations 28LC and 28LD. This numbering was inconsistent with the numbering of the surrounding regulations and made it difficult to locate regulations 28XXA to 28XXF.

Items 1 to 8 and 12 to 15 renumber regulations 28LCA to 28LCF and amend any cross-references in the *National Consumer Credit Protection Regulations 2010* or the notes so that they refer to the renumbered sections.

Item 16 amends a reference in the standard form in Schedule 10 to the *National Consumer Credit Protection Regulations 2010* so that it refers to the new regulation number for regulation 28XCCC.

**Items 9 to 11 – Regulation 113**

Item 11 inserts a savings provision which removes the need for Schedule 10 forms to be amended so that they refer to the new regulation number for regulation 28XCCC. It achieves this by deeming forms in the required form before the commencement of the Amending Regulations to be in the required form after commencement. This new savings provision is inserted into Part 7-11 of the Regulations which contains other savings provisions.

Item 9 generalise the heading to Part 7-11 so that it continues to correctly describe the content of the Part after the addition of the new savings provision. Item 10 divides the Part into two Divisions – one Division for the existing savings provision relating to reliance on State and Territory Consumer Credit Codes and one Division for the new savings provisions relating to Schedule 10 forms.