

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2012 No. 266**

### **Issued by the Minister for Financial Services and Superannuation**

Subject -        *Corporations Act 2001*  
                      *Corporations Amendment Regulations 2010 (No. 3) Amendment*  
                      *Regulation 2012 (No. 2)*

The *Corporations Act 2001* (the Act) provides for the regulation of corporations, financial markets, products and services, including in relation to licensing, conduct, financial product advice and disclosure.

Subsection 1364(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed by regulations, or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Act.

*Corporations Amendment Regulations 2010 (No. 3) Amendment Regulation 2012 (No. 2)* (the Regulation) makes some amendments to the *Corporations Regulations 2001* (the Principal Regulations).

The Regulation amends the *Corporations Amendment Regulations 2010 (No. 3)* to extend the transitional arrangements under which trustee companies are deemed to have a licence as required under the Act, from its current expiration date of 31 December 2012 to 30 June 2013. This allows time for the State Governments to pass complementary legislation.

Under the *Corporations Agreement 2002* (the Corporations Agreement), the State and Territory Governments referred their constitutional powers with respect to corporate regulation to the Commonwealth. Under subclauses 506(1) and 507(1) of the Corporations Agreement, the Commonwealth is required to consult with State and Territory Ministers of the Legislative and Governance Forum for Corporations (LG Forum) before making a regulation under the national law. The LG Forum has been consulted about the Regulation as required by the Corporations Agreement.

The Australian Securities and Investments Commission (ASIC) were consulted in preparing the Regulation.

Section 1 provides that the title of the Regulation is the Corporations Amendment Regulations 2010 (No. 3) Amendment Regulation 2012 (No. 2). The Regulation commences the day after it is registered on the Federal Register of Legislative Instruments.

Item 1 of the regulation provides that the current transitional arrangements for unlicensed trustee companies that are listed in Schedule 8AA to the Principal Regulations are extended until 30 June 2013.

This extension allows the States and Territories to pass complementary legislation enabling ASIC to make determinations under the Act. This legislation is necessary to facilitate transfers of estate assets and liabilities from a transferring trustee company to a receiving trustee company.

Item 2 provides that trustee companies who wish to continue providing trustee company services must apply to ASIC for a licence before 30 June 2013.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Corporations Amendment Regulations 2010 (No. 3) Amendment Regulation 2012***

***(No. 2)***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to maintain the effectiveness of the national regulation of trustee companies.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.