

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Competition and Consumer Act 2010
Corporations (Aboriginal and Torres Strait Islander) Act 2006
Corporations Act 2001
Migration Act 1958
National Consumer Credit Protection Act 2009
Renewable Energy (Electricity) Act 2000

*Treasury Laws Amendment (Corporate Insolvency Reforms Consequential
Amendments) Regulations 2021*

Section 172 of the *Competition and Consumer Act 2010* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 633-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 1364 of the *Corporations Act 2001* (Corporations Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 504 of the *Migration Act 1958* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 329 of the *National Consumer Credit Protection Act 2009* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Section 161 of the *Renewable Energy (Electricity) Act 2000* provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021* (the Regulations) make consequential amendments to the following regulations, which are necessary to support implementation of the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* and *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* (the corporate insolvency reforms), which commenced on 1 January 2021:

- *Competition and Consumer (Industry Codes – Franchising) Regulation 2014*
- *Competition and Consumer (Industry Codes – Oil) Regulations 2017*
- *Corporations Regulations 2001*
- *Migration Regulations 1994*
- *National Consumer Credit Protection Regulations 2010s*
- *Renewable Energy (Electricity) Regulations 2001*

The Regulations further amend the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* to modify the Corporations Act restructuring provisions so that they are tailored to the special risks and requirements of the Indigenous corporate sector, and enable an eligible company to adopt the simplified liquidation process.

The corporate insolvency reforms support small businesses by reducing the costs of external administration and the compliance burden for insolvency practitioners. The purpose of the Regulations is to ensure that these reforms are appropriately reflected across the Commonwealth statute book.

Consultation on the Regulations was undertaken from 14 October 2021 to 1 November 2021. Stakeholder submissions indicated support for the reforms.

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

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

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Regulation Impact Statement

The Regulation Impact Statement for the corporate insolvency reforms was included in the explanatory statement for the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*.

Details of the *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulation 2021* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the following Acts:

- *Competition and Consumer Act 2010*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006*
- *Corporations Act 2001*
- *Migration Act 1958*
- *National Consumer Credit Protection Act 2009*
- *Renewable Energy (Electricity) Act 2000*

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 – Amendments

Debt restructuring process for Aboriginal and Torres Strait Islander corporations

New Part 11-4A of the CATSI Act is established to give Aboriginal and Torres Strait Islander corporations access to the debt restructuring process by applying the Corporations Act *restructuring provisions* (that is, Part 5.3B of, and Schedule 2 to, the Corporations Act and other relevant provisions) to the CATSI Act.

Items 7 and 8

Items 7 and 8 modify the Corporations Act restructuring provisions so that they are tailored to the special risks and requirements of the Indigenous corporate sector. In particular, the modifications ensure that provisions concerning the power of courts are replaced by the corresponding CATSI Act provisions, and certain terms are replaced by a corresponding term that is used in the CATSI Act.

Simplified liquidation process for Aboriginal and Torres Strait Islander corporations

For an eligible company to adopt the simplified liquidation process, a triggering event under section 489F of the Corporations Act must occur. A triggering event includes where a special resolution is passed under section 491 of the Corporations Act to wind up a company or in other circumstances such as when a voluntary administration process has terminated.

Item 9

Item 9 modifies the Corporations Act to ensure that an eligible registered Aboriginal and Torres Strait Islander corporation can enter the simplified liquidation process (in the same way as corporations incorporated under the Corporations Act) by passing a special resolution under section 526-20 of the CATSI Act. This is in addition to the other triggering events under section 489F of the Corporations Act.

Part 1 – Amendments

Corporate insolvency clarifications in relation to debt restructuring

Item 10

Item 10 removes references to insurance companies in relation to when the restructuring of a company ends. These provisions are no longer necessary, as entities regulated under the *Insurance Act 1973* and *Life Insurance Act 1995* are not eligible to access debt restructuring.

Item 12

Item 12 allows the restructuring plan to provide that the small business restructuring practitioner for a plan is taken to act as a company's agent when performing a function or duty, or exercising a power, in accordance with the restructuring plan. For example, the plan could provide that the small business restructuring practitioner acts as an agent of the company if they sell the company property, as required or permitted, to make payments to creditors under the plan.

Items 11 and 13

Items 11 and 13 of Part 2 repeals regulations 5.3B.10 and 5.3B.41 of the Corporations Regulations, as they are replaced by a single provision in the *Treasury Laws Amendment (2021 Measures No. 5) Bill 2021*. The proposed section 456LA provides qualified privilege to a small business restructuring practitioner for a company and for a restructuring plan. Item 13 is therefore contingent on the enactment of section 456LA of the Corporations Act.

Item 13 also repeals regulation 5.3B.40 of the Corporations Regulations 2001 (Corporations Regulations) as it is replaced by item 12 of the Regulations.

Updating Commonwealth Regulations for debt restructuring

Items 1, 2 and 3

Item 1 updates subclause 4(2) in Schedule 1 to the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* to include the definition of a restructuring practitioner, as defined in the Corporations Act.

Item 2 amends subclause 17(5) of the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* to include the requirement that where a franchisor becomes a Chapter 5 body corporate the franchisor must notify the franchisee or prospective franchisee of the name and address of a small business restructuring practitioner within 14 days of the supplier becoming aware of the fact.

Item 3 provides that the amendments apply to a franchisor that becomes a Chapter 5 body corporate after commencement of Schedule 1 to the Regulations.

Items 4, 5 and 6

Item 4 updates Clause 4 in Schedule 1 to the *Competition and Consumer (Industry Codes – Oil) Regulations 2017* to include the definition of a restructuring practitioner, as defined in the Corporations Act.

Item 5 amends subclause 29(4) of the *Competition and Consumer (Industry Codes – Oil) Regulations 2017* include the requirement that where a supplier becomes a Chapter 5 body corporate the supplier must notify the retailer or prospective retailer of the name and address of a small business restructuring practitioner within 14 days of the supplier becoming aware of the fact.

Item 6 provides that the amendments apply to a supplier that becomes a Chapter 5 body corporate after commencement of Schedule 1 to the Regulations.

Item 14

Regulation 2.84 of the *Migration Regulations 1994* requires an approved work sponsor to notify Immigration if any of the specified events in that section occur. Insolvency related events are specified in subregulations 2.84(3) and (4) of the *Migration Regulations 1994*, in relation to a standard business sponsor (or party to a work agreement) and a professional development sponsor respectively. Paragraphs 2.84(3)(k) and 2.84(4)(h) of the *Migration Regulations 1994* provide identical lists of specific insolvency related events which must be notified to Immigration, including where a liquidator, administrator or receiver has been appointed under Chapter 5 of the Corporations Act.

Item 14 amends paragraphs 2.84(3)(k) and 2.84(4)(h) of the *Migration Regulations 1994* to specify that Immigration should also be notified if an approved sponsor appoints a small business restructuring practitioner for the company (but not where a small business restructuring practitioner is appointed to administer a restructuring plan, consistent with the current approach to deed of company arrangements). This is because the restructuring process is used by companies that are, or are about to be, insolvent.

Items 15 and 16

Item 15 updates subregulation 3(1) of the *National Consumer Credit Protection Regulations 2010* to include the definition of a restructuring practitioner, as defined in the Corporations Act.

Item 16 amends subregulation 20(3) of the *National Consumer Credit Protection Regulations 2010* to include a restructuring practitioner for a corporation or a corporation's restructuring plan among those listed as exempt from attaining an Australian credit license (ACL). This will ensure that a restructuring practitioner will not be required to be licensed when assisting a company that engages in credit activities, consistent with the treatment of other practitioners of insolvency processes.

Items 17, 18 and 19

The *Renewable Energy (Electricity) Act 2000* establishes a framework for renewable energy generators to create 'renewable energy certificates' which can be sold to purchasers of electricity. To create these certificates, a body corporate must first be registered under the Act. Regulation 3L of the *Renewable Energy (Electricity) Regulations 2001* prescribes matters to which the Regulator must have regard when determining whether an applicant is fit and proper to be registered. Paragraph 3L(1)(f)(iii) requires that the Regulator must consider whether the applicant is a body corporate that, overseas or under foreign law, is being wound up or under administration, among others.

Item 19 moves the contents of subparagraph 3L(1)(f)(iii) of the *Renewable Energy (Electricity) Regulations 2001* to new paragraph 3L(1)(g) of those Regulations and adds to the list of body corporates that, overseas or under foreign law, is in external administration. The amendment includes a body corporate that, overseas or under foreign law, is under restructuring or subject to a restructuring plan that has not yet terminated. This ensures that the Regulator can have regard to such corporations for the purposes of the fit and proper person test, consistent with the treatment of corporations undergoing other types of external administration overseas or under foreign law.

Items 17 and 18 repeal subparagraph 3L(1)(f)(iii) of the *Renewable Energy (Electricity) Regulations 2001*, which is replaced by item 19.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021

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

This Legislative Instrument makes consequential amendments to the following regulations, which are necessary to support implementation of the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* and *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* (the corporate insolvency reforms), which commenced on 1 January 2021:

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Human rights implications

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

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.