

# EXPOSURE DRAFT

1 Inserts for  
2 **Tax Laws Amendment (2009 Measures**  
3 **No. 6) Bill 2009: Loss roll-over for**  
4 **merging superannuation funds**  
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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1.		
2. Schedule ??, Parts 1, 2 and 3	The day on which this Act receives the Royal Assent.	
3. Schedule ??, Parts 4 and 5	1 July 2013.	1 July 2013

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1  
2 **Schedule ??—Loss roll-over for merging**  
3 **superannuation funds**

4 **Part 1—Main amendment**

5 *Income Tax Assessment Act 1997*

6 **1 At the end of Part 3-30**

7 Add:

8 **Division 310—Loss roll-over for merging superannuation**  
9 **funds**

10 **Table of Subdivisions**

11 Guide to Division 310

12 310-A Object of this Division

13 310-B When a roll-over may be chosen

14 310-C Consequences of roll-over for losses

15 310-D Other consequences of roll-over

16 **Guide to Division 310**

17 **310-1 What this Division is about**

18 This Division sets out special rules for certain merging  
19 superannuation funds. These rules relate to the transfer of losses,  
20 the treatment of CGT events related to the merger, and the  
21 treatment of assets related to the merger.

22 **Operative provisions**

23 **Subdivision 310-A—Object of this Division**

24 **310-5 Object**

25 The main object of this Division is to facilitate the consolidation of  
26 the superannuation industry by allowing certain merging

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\*superannuation funds to retain the value of certain losses that might otherwise be lost as a result of the merger.

## Subdivision 310-B—When a roll-over may be chosen

### Table of sections

310-10	Original entity is a complying superannuation fund
310-15	Original entity is a pooled superannuation trust
310-20	Original entity is a life insurance company

### 310-10 Original entity is a complying superannuation fund

(1) A trustee of a \*complying superannuation fund can choose to obtain a roll-over if:

- (a) one or more \*CGT events (the *transfer events*) happen because the complying superannuation fund (the *original entity*) ceases to hold all of its \*CGT assets; and
- (b) because of the cessation, CGT assets (the *identical assets*) become held by one of the following:
  - (i) another complying superannuation fund (the *continuing entity*);
  - (ii) a \*pooled superannuation trust (the *continuing entity*) to support units in the continuing entity held by another complying superannuation fund;
  - (iii) a \*life insurance company (the *continuing entity*) to support a \*life insurance policy held by another complying superannuation fund; and
- (c) together, the identical assets are identical to all the original entity's CGT assets just before the time the first of the transfer events happens (the *original assets*); and
- (d) the original entity has no members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) just after the time (the *completion time*) the last of the transfer events happens; and
- (e) the transfer events all happen in a single income year (the *current year*); and
- (f) the other complying superannuation fund referred to in paragraph (b) was not a \*small superannuation fund just before the first of the transfer events.

(2) For the purposes of paragraphs (1)(a) and (c), ignore any \*CGT assets retained by the original entity to pay its existing or expected debts.

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## 310-15 Original entity is a pooled superannuation trust

- 1
- 2 (1) A trustee of a \*pooled superannuation trust can choose to obtain a
- 3 roll-over if:
- 4 (a) one or more \*CGT events (the *transfer events*) happen
- 5 because the pooled superannuation trust (the *original entity*)
- 6 ceases to hold all of the \*CGT assets that support the units in
- 7 the original entity held by a \*complying superannuation fund
- 8 (the *first fund*); and
- 9 (b) because of the cessation, CGT assets (the *identical assets*)
- 10 become held by one of the following:
- 11 (i) another complying superannuation fund (the *continuing*
- 12 *entity*);
- 13 (ii) another pooled superannuation trust (the *continuing*
- 14 *entity*) to support units in the continuing entity held by
- 15 another complying superannuation fund;
- 16 (iii) a \*life insurance company (the *continuing entity*) to
- 17 support a \*life insurance policy held by another
- 18 complying superannuation fund; and
- 19 (c) together, the identical assets are identical to all the original
- 20 entity's CGT assets that support the units in the original
- 21 entity held by the first fund just before the time the first of
- 22 the transfer events happens (the *original assets*); and
- 23 (d) the first fund has no members (within the meaning of the
- 24 *Superannuation Industry (Supervision) Act 1993*) just after
- 25 the time (the *completion time*) the last of the transfer events
- 26 happens; and
- 27 (e) the transfer events all happen in a single income year (the
- 28 *current year*); and
- 29 (f) the other complying superannuation fund referred to in
- 30 paragraph (b) was not a \*small superannuation fund just
- 31 before the first of the transfer events.
- 32 (2) For the purposes of paragraphs (1)(a) and (c), ignore any \*CGT
- 33 assets retained by the original entity to pay its existing or expected
- 34 debts relating to the transfer events.

## 310-20 Original entity is a life insurance company

- 35
- 36 (1) A \*life insurance company (the *original entity*) can choose to
- 37 obtain a roll-over if:
- 38 (a) one or more \*CGT events (the *transfer events*) happen
- 39 because the original entity ceases to hold all of the \*CGT
-

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- 
- 1 assets that support a \*life insurance policy held by a  
2 \*complying superannuation fund (the *first fund*); and  
3 (b) because of the cessation, CGT assets (the *identical assets*)  
4 become held by one of the following:  
5 (i) another complying superannuation fund (the *continuing*  
6 *entity*);  
7 (ii) a \*pooled superannuation trust (the *continuing entity*) to  
8 support units in the continuing entity held by another  
9 complying superannuation fund;  
10 (iii) another life insurance company (the *continuing entity*)  
11 to support a life insurance policy held by another  
12 complying superannuation fund; and  
13 (c) together, the identical assets are identical to all the original  
14 entity's CGT assets that support the life insurance policy held  
15 by the first fund just before the time the first of the transfer  
16 events happens (the *original assets*); and  
17 (d) the first fund has no members (within the meaning of the  
18 *Superannuation Industry (Supervision) Act 1993*) just after  
19 the time (the *completion time*) the last of the transfer events  
20 happens; and  
21 (e) the transfer events all happen in a single income year (the  
22 *current year*); and  
23 (f) the other complying superannuation fund referred to in  
24 paragraph (b) was not a \*small superannuation fund just  
25 before the first of the transfer events.  
26 (2) For the purposes of paragraphs (1)(a) and (c), ignore any \*CGT  
27 assets retained by the original entity to pay its existing or expected  
28 debts relating to the transfer events.

## 29 Subdivision 310-C—Consequences of roll-over for losses

### 30 Table of sections

31	310-25	Consequences if original entity is a complying superannuation fund
32	310-30	Consequences for net capital losses of other original entities
33	310-35	Consequences for tax losses of other original entities

### 34 310-25 Consequences if original entity is a complying 35 superannuation fund

- 36 (1) If the roll-over is chosen under section 310-10, the original entity  
37 can transfer the following losses to the continuing entity:

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- 1 (a) any of its \*net capital losses for earlier income years than the  
2 current year;
- 3 (b) any net capital loss it makes for the current year, worked out  
4 as if the current year ended at the completion time (a *current*  
5 *year net capital loss*);
- 6 (c) any of its \*tax losses for earlier income years than the current  
7 year;
- 8 (d) any tax loss it incurs for the current year, worked out as if the  
9 current year ended at the completion time (a *current year tax*  
10 *loss*).
- 11 (2) If a \*net capital loss mentioned in paragraph (1)(a) or (b) for an  
12 income year is transferred:
- 13 (a) the original entity is taken not to have made the loss for that  
14 income year; and
- 15 (b) an amount equal to the loss is taken to be a net capital loss  
16 made by the continuing entity for that income year.
- 17 (3) If a \*tax loss mentioned in paragraph (1)(c) or (d) for an income  
18 year is transferred:
- 19 (a) the original entity is taken not to have incurred the loss for  
20 that income year; and
- 21 (b) an amount equal to the loss is taken to be a tax loss incurred  
22 by the continuing entity for that income year.

## 23 **310-30 Consequences for net capital losses of other original entities**

- 24 (1) If the roll-over is chosen under section 310-15 or 310-20, the  
25 original entity can transfer to the continuing entity the following  
26 losses, worked out by only considering \*capital gains and \*capital  
27 losses that relate to the original assets:
- 28 (a) any of the original entity's \*net capital losses for earlier  
29 income years than the current year;
- 30 (b) any net capital loss the original entity makes for the current  
31 year, worked out as if the current year ended at the  
32 completion time (a *current year net capital loss*).
- 33 (2) If a \*net capital loss mentioned in subsection (1) for an income  
34 year is transferred:
- 35 (a) the original entity is taken not to have made the loss for that  
36 income year; and
- 37 (b) an amount equal to the loss is taken to be a net capital loss  
38 made by the continuing entity for that income year.
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## 310-35 Consequences for tax losses of other original entities

- (1) If the roll-over is chosen under section 310-15 or 310-20, the original entity can transfer to the continuing entity the following losses, worked out by only considering assessable income and deductions that relate to the original assets:
- (a) any of the original entity's \*tax losses for earlier income years than the current year;
  - (b) any tax loss the original entity incurs for the current year, worked out as if the current year ended at the completion time (*a current year tax loss*).
- (2) If a \*tax loss mentioned in subsection (1) for an income year is transferred:
- (a) the original entity is taken not to have incurred the loss for that income year; and
  - (b) an amount equal to the loss is taken to be a tax loss incurred by the continuing entity for that income year.

## Subdivision 310-D—Other consequences of roll-over

### Table of sections

310-40	When this Subdivision applies
310-45	Consequences for CGT assets—possible further choice
310-50	CGT assets—if global asset approach chosen
310-55	CGT assets—individual asset approach
310-60	Consequences for revenue assets—possible further choice
310-65	Revenue assets—if global asset approach chosen
310-70	Revenue assets—individual asset approach
310-75	Further consequences for Division 230 financial arrangements
310-80	Choices

### 310-40 When this Subdivision applies

The provisions in this Subdivision apply if a roll-over is chosen under Subdivision B.

### 310-45 Consequences for CGT assets—possible further choice

- (1) If, apart from subsection 310-25(2) or 310-30(2), the original entity would have a current year net capital loss, the entity that chose the roll-over can choose either section 310-50 or 310-55 to apply in relation to:
- (a) each of the original assets, other than:

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- 1 (i) an original asset for which a \*capital loss for the related  
2 transfer event was disregarded by the original entity  
3 when working out whether it had a current year net  
4 capital loss for the purposes of section 310-25 or 310-30  
5 (an *excluded original asset*); or  
6 (ii) an original asset that is a \*revenue asset; and  
7 (b) each identical asset corresponding to an original asset  
8 covered by paragraph (a).

9 Note: For *current year net capital loss*, see paragraph 310-25(1)(b) or  
10 310-30(1)(b).

- 11 (2) However, if, apart from subsection 310-25(2) or 310-30(2), the  
12 original entity would not have a current year net capital loss, then  
13 section 310-55 (and not section 310-50) applies in relation to:  
14 (a) each of the original assets, other than:  
15 (i) an excluded original asset; or  
16 (ii) a \*revenue asset; and  
17 (b) each identical asset corresponding to an original asset  
18 covered by paragraph (a).

## 19 **310-50 CGT assets—if global asset approach chosen**

### 20 *Consequences for original entity*

- 21 (1) For each of the original assets to which this section applies, the  
22 original entity's \*capital proceeds from the relevant transfer event  
23 are taken to be an amount equal to:  
24 (a) if, but for this subsection, the event would result in a capital  
25 gain—the asset's cost base just before the event; or  
26 (b) if, but for this subsection, the event would result in a capital  
27 loss—the asset's reduced cost base just before the event.

28 Note 1: This section only applies if it is chosen to apply under section 310-45.

29 Note 2: This section does not apply to an excluded original asset or a revenue  
30 asset (see paragraph 310-45(1)(a)).

### 31 *Consequences for continuing entity*

- 32 (2) For each of the identical assets to which this section applies, the  
33 asset's \*cost base (in the hands of the continuing entity) is taken to  
34 be an amount equal to the cost base of the corresponding original  
35 asset just before the relevant transfer event.

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1 Note: This section applies to an identical asset that corresponds to an  
2 original asset to which this section applies (see paragraph  
3 310-45(1)(b)).

- 4 (3) For each of the identical assets to which this section applies, the  
5 asset's \*reduced cost base (in the hands of the continuing entity) is  
6 taken to be an amount equal to the reduced cost base of the  
7 corresponding original asset just before the relevant transfer event.

## 8 **310-55 CGT assets—individual asset approach**

### 9 *Consequences for original entity*

- 10 (1) The original entity may disregard any \*capital loss for a transfer  
11 event relating to an original asset to which this section applies.

12 Note 1: This section does not apply if section 310-50 (global asset approach)  
13 is chosen to apply under section 310-45 (possible further choice).

14 Note 2: This section does not apply to an excluded original asset or a revenue  
15 asset (see paragraph 310-45(2)(a)).

- 16 (2) Subsections (3) and (4) apply if under subsection (1) the original  
17 entity disregards a \*capital loss for a transfer event relating to an  
18 original asset.

- 19 (3) The original entity's \*capital proceeds from the transfer event are  
20 taken to be an amount equal to the \*reduced cost base of the  
21 original asset just before the event.

### 22 *Consequences for continuing entity*

- 23 (4) The corresponding identical asset's:  
24 (a) \*cost base (in the hands of the continuing entity); and  
25 (b) \*reduced cost base (in the hands of the continuing entity);  
26 are taken to be an amount equal to the \*reduced cost base of the  
27 original asset just before the event.

## 28 **310-60 Consequences for revenue assets—possible further choice**

- 29 (1) If, apart from subsection 310-25(3) or 310-35(2), the original entity  
30 would have a current year tax loss, the entity that chose the  
31 roll-over can choose either section 310-65 or 310-70 to apply in  
32 relation to all of the original assets, and identical assets, that are  
33 \*revenue assets.

34 Note: For *current year tax loss*, see paragraph 310-25(1)(d) or 310-35(1)(b).

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- 1 (2) However, if, apart from subsection 310-25(3) or 310-35(2), the  
2 original entity would not have a current year tax loss, then  
3 section 310-70 (and not section 310-65) applies in relation to all of  
4 those assets.

## 5 **310-65 Revenue assets—if global asset approach chosen**

### 6 *Consequences for original entity*

- 7 (1) For each of the original assets that is a \*revenue asset, the original  
8 entity's gross proceeds for the relevant transfer event are taken to  
9 be the amount (the *deemed proceeds*) the original entity would  
10 need to have received in order to have a nil profit and nil loss for  
11 the event.

12 Note: This section only applies if it is chosen to apply under section 310-60.

### 13 *Consequences for continuing entity*

- 14 (2) For each of the identical assets that is a \*revenue asset, the  
15 continuing entity is taken, for the purposes of this Act, to have paid  
16 an amount for that asset at the time of the transfer event that is  
17 equal to the deemed proceeds for the corresponding original asset.

## 18 **310-70 Revenue assets—individual asset approach**

### 19 *Original entity may disregard any tax loss for the event*

- 20 (1) The original entity may disregard any \*tax loss for a transfer event  
21 relating to an original asset that is a \*revenue asset.

22 Note: This section does not apply if section 310-65 (global asset approach)  
23 is chosen to apply under section 310-60 (possible further choice).

- 24 (2) Subsections (3) and (4) apply if under subsection (1) the original  
25 entity disregards a \*tax loss for a transfer event relating to an  
26 original asset.

### 27 *Consequences for original entity*

- 28 (3) The original entity's gross proceeds for the transfer event are taken  
29 to be the amount (the *deemed proceeds*) the original entity would  
30 need to have received in order to have a nil profit and nil loss for  
31 the event.

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*Consequences for continuing entity*

- 1
- 2 (4) For the purposes of this Act, the continuing entity is taken to have  
3 paid an amount for the corresponding identical asset at the time of  
4 the transfer event that is equal to the deemed proceeds for the  
5 original asset.

6 **310-75 Further consequences for Division 230 financial**  
7 **arrangements**

- 8 (1) This section applies to each identical asset:  
9 (a) that, to the extent to which it is or is part of a \*Division 230  
10 financial arrangement, is an asset to which one of the  
11 following applies immediately after the completion time:  
12 (i) Subdivision 230-C (fair value method);  
13 (ii) Subdivision 230-D (foreign exchange retranslation  
14 method);  
15 (iii) Subdivision 230-F (reliance on financial reports  
16 method); and  
17 (b) is an asset that corresponds to an original asset that is not an  
18 excluded original asset.

19 Note: For *excluded original asset*, see subparagraph 310-45(1)(a)(i).

- 20 (2) Work out whether the \*Division 230 starting value for the asset  
21 exceeds or falls short of:  
22 (a) if the asset is neither a \*revenue asset, trading stock nor a  
23 \*depreciating asset—the original entity's \*capital proceeds  
24 from the transfer event relating to the corresponding original  
25 asset; or  
26 (b) if the asset is a revenue asset—the deemed proceeds for the  
27 transfer event relating to the corresponding original asset.
- 28 (3) If there is an excess, an amount equal to 25% of that excess is  
29 included in the continuing entity's assessable income for:  
30 (a) the current year; and  
31 (b) each of the 3 subsequent income years.
- 32 (4) If there is a shortfall, the continuing entity is entitled to a deduction  
33 equal to 25% of that shortfall for:  
34 (a) the current year; and  
35 (b) each of the 3 subsequent income years.

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1 **310-80 Choices**

- 2 (1) A choice under this Division must be made:
- 3 (a) by the day the original entity's \*income tax return is lodged
- 4 for the current year; or
- 5 (b) within a further time allowed by the Commissioner.
- 6 (2) The way the original entity's \*income tax return is prepared is
- 7 sufficient evidence of the making of the choice.

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## 2 **Part 2—Other amendments**

### 3 *Income Tax Assessment Act 1997*

#### 4 **2 Subsection 40-340(1) (at the end of the table)**

5

Add:

- |   |   |   |
|---|---|---|
| 5 | Disposal of asset as part of merger of superannuation funds | The transferor chooses a roll-over under Division 310 in relation to the *disposal. |
|---|---|---|

#### 6 **3 Section 112-97 (at the end of the table)**

7

Add:

- |    |   |   |                |
|----|---|---|----------------|
| 31 | An entity chooses a roll-over under Division 310 for particular assets, and the entity chooses section 310-50 to apply for those assets         | The total cost base and reduced cost base | section 310-50 |
| 32 | An entity chooses a roll-over under Division 310 for particular assets, but the entity does not choose section 310-50 to apply for those assets | The total cost base and reduced cost base | section 310-55 |

#### 8 **4 Section 116-25 (table item dealing with CGT event A1)**

9

Repeal the item, substitute:

- |    |                         |                  |  |
|----|-------------------------|------------------|--|
| A1 | Disposal of a CGT asset | 1, 2, 3, 4, 5, 6 | If the disposal is because another entity exercises an option: see section 116-65<br>If the disposal is of * shares or an interest in a trust: see section 116-80<br>If the disposal is a gift for which a section 30-212 valuation is obtained: see section 116-100<br>If a roll-over under Division 310 applies to the disposal: see section 116-110 |
|----|-------------------------|------------------|--|

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1 **5 Section 116-25 (table item dealing with CGT event C2)**

2 Omit “and 116-80”, substitute “, 116-80 and 116-110”.

3 **6 Section 116-25 (table item dealing with CGT event E2)**

4 Repeal the item, substitute:

E2	Transferring a CGT asset to a trust	1, 2, 3, 4, 5, 6	If a roll-over under Division 310 applies to the transfer: see section 116-110
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5 **7 At the end of Division 116**

6 Add:

7 **116-110 Loss roll-overs for merging superannuation funds**

8 If a roll-over is chosen under Division 310 in relation to CGT event  
9 A1, C2 or E2, the original entity’s (within the meaning of that  
10 Division) \*capital proceeds from the event is the amount worked  
11 out under subsection 310-50(1) or 310-55(3).

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## 2 **Part 3—Application**

### 3 **8 Application**

4 The amendments made by Parts 1 and 2 apply in relation to an original  
5 entity and a continuing entity if all of the transfer events relating to  
6 those entities happen during the period:

7 (a) starting on 24 December 2008; and

8 (b) ending on 30 June 2011.

9 Note: The transfer events that need to fall within this period are all of the CGT events referred  
10 to in paragraph 310-10(1)(a), 310-15(1)(a) or 310-20(1)(a) of the *Income Tax*  
11 *Assessment Act 1997* that relate to the entities.

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## 2 **Part 4—Repeals**

### 3 *Income Tax Assessment Act 1997*

#### 4 **9 Subsection 40-340(1) (table item 5)**

5 Repeal the item.

#### 6 **10 Section 112-97 (table items 31 and 32)**

7 Repeal the items.

#### 8 **11 Section 116-25 (table item dealing with CGT event A1)**

9 Omit “If a roll-over under Division 310 applies to the disposal: see  
10 section 116-110”.

#### 11 **12 Section 116-25 (table item dealing with CGT event C2)**

12 Omit “, 116-80 and 116-110”, substitute “and 116-80”.

#### 13 **13 Section 116-25 (table item dealing with CGT event E2)**

14 Omit “If a roll-over under Division 310 applies to the transfer: see  
15 section 116-110”, substitute “None”.

#### 16 **14 Section 116-110**

17 Repeal the section.

#### 18 **15 Division 310**

19 Repeal the Division.

#### 20 **16 Application of repeal provisions**

21 The repeals made by this Part apply in relation to CGT events  
22 happening on or after 1 July 2011.

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## 2 **Part 5—Savings**

### 3 **17 Object**

4 The object of this Part is to ensure that, despite the repeals made by  
5 Part 4, the full legal and administrative consequences of:

- 6 (a) any act done or omitted to be done; or
- 7 (b) any state of affairs existing; or
- 8 (c) any period ending;

9 before such a repeal applies, can continue to arise and be carried out,  
10 directly or indirectly through an indefinite number of steps, even if  
11 some or all of those steps are taken after the repeal applies.

### 12 **18 Making and amending assessments, and doing other** 13 **things, in relation to past matters**

14 Even though a provision is repealed by Part 4, the repeal is disregarded  
15 for the purpose of doing any of the following under any Act or  
16 legislative instrument (within the meaning of the *Legislative*  
17 *Instruments Act 2003*):

- 18 (a) making or amending an assessment (including under a  
19 provision that is itself repealed);
- 20 (b) exercising any right or power, performing any obligation or  
21 duty or doing any other thing (including under a provision  
22 that is itself repealed);

23 in relation to any act done or omitted to be done, any state of affairs  
24 existing, or any period ending, before the repeal applies.

### 25 **19 Saving of provisions about effect of assessments**

26 If a provision or part of a provision that is repealed by Part 4 deals with  
27 the effect of an assessment, the repeal is disregarded in relation to  
28 assessments made, before or after the repeal applies, in relation to any  
29 act done or omitted to be done, any state of affairs existing, or any  
30 period ending, before the repeal applies.

### 31 **20 Repeals disregarded for the purposes of dependent** 32 **provisions**

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1 If the operation of a provision (the *subject provision*) of any Act or  
2 legislative instrument (within the meaning of the *Legislative*  
3 *Instruments Act 2003*) made under any Act depends to any extent on a  
4 provision that is repealed by Part 4 of this Schedule, the repeal is  
5 disregarded so far as it affects the operation of the subject provision.

6 **21 Part does not limit operation of section 8 of the Acts**  
7 ***Interpretation Act 1901***

8 This Part does not limit the operation of section 8 of the *Acts*  
9 *Interpretation Act 1901*.

10