2016-2017-2018-2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Treasury Laws Amendment (Measures for a later sitting) Bill 2019: miscellaneous amendments

EXPOSURE DRAFT EXPLANATORY MEMORANDUM

(Circulated by authority of the

Minister for Housing and Assistant Treasurer)

Table of contents

Glossary 2

General outline and financial impact 2

Chapter 1 - Miscellaneous Amendments 2

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

|  |  |
| --- | --- |
| Abbreviation | Definition |
| ACCC | Australian Competition and Consumer Commission |
| ASIC | Australian Securities and Investments Commission |
| ATO | Australian Taxation Office |
| PAYGW | Pay as You Go Withholding |

General outline and financial impact

## Miscellaneous amendments

Schedule # to this Bill makes a number of miscellaneous amendments to laws relating to taxation, superannuation, corporations and credit.

These amendments make minor technical changes to correct typographical and numbering errors, bring provisions in line with modern drafting conventions, repeal inoperative provisions, remove administrative inefficiencies and update references.

Date of effect: Part 1 of the Schedule commences the day after this Act receives Royal Assent. Parts 2 and 3 of the Schedule commence on the first 1 January, 1 April, 1 July or 1 October after the day this Act receives Royal Assent. Most of the amendments apply from the date of commencement.

Proposal announced: These amendments have not been previously announced.

Financial impact: These amendments are estimated to have a small but unquantifiable financial impact over the forward estimates period.

Compliance cost impact: The amendments have a negligible impact on compliance costs.

Chapter 1 - Miscellaneous Amendments

## Outline of chapter

Schedule # makes a number of miscellaneous amendments to laws relating to taxation, superannuation, corporations and credit. These amendments are part of the Government’s commitment to the care and maintenance of Treasury portfolio legislation.

These amendments make minor technical changes to correct typographical and numbering errors, bring provisions in line with modern drafting conventions, enhance efficiency, coherency and simplicity, repeal inoperative provisions, remove administrative inefficiencies and update references.

## Context of amendments

Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, correct unintended outcomes and improve the quality of laws. Making such amendments gives priority to the care and maintenance of Treasury portfolio legislation.

The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which was appointed to examine how to reduce delays in the enactment of tax legislation and improve the quality of tax law changes. It has since been expanded to all Treasury portfolio legislation.

## Summary of new law

These miscellaneous amendments address technical deficiencies and legislative uncertainties in laws relating to taxation, superannuation, corporations and credit by:

* correcting spelling and typographical errors;
* updating references to Gazettal notices to bring provisions into line with modern drafting conventions;
* fixing incorrect legislative references;
* enhancing readability and administrative efficiency; and
* repealing redundant and inoperative provisions.

## Detailed explanation of new law

### Part 1 – Amendments commencing the day after Royal Assent

#### Amendments to the Australian Securities and Investments Commission Act 2001

* 1. Part 1 of the Schedule repeals the note to subsection 8(2) of the *Australian Securities and Investments Commission Act 2001*. This note is redundant as it refers to section 44 of the *Financial Management and Accountability Act 1997* which has been repealed by the *Public Governance, Performance and Accountability Act 2013.* [Schedule #, item 1, note to subsection 8(2) of the Australian Securities and Investments Commission Act 2001]
  2. Part 1 of the Schedule also ensures that ASIC may disclose certain information relating to ‘relevant providers’ (certain financial advisers) to monitoring bodies of compliance schemes to enable them to perform their functions or exercise their powers under Part 7.6 of the Corporations Act. Under Part 7.6 of the Corporations Act, a monitoring body must monitor and enforce compliance with a Code of Ethics by a relevant provider that is covered by a compliance scheme. [Schedule #, item 2, paragraph 127(4)(e) of the Australian Securities and Investments Commission Act 2001]
  3. The amendments to ensure that ASIC may disclose certain information to monitoring bodies apply in relation to disclosures of information made on or after the day of Royal Assent, regardless of whether ASIC obtained the information it is disclosing on or after that date. [Schedule #, item 7, section 326 of the Australian Securities and Investments Commission Act 2001]
  4. Further amendments are made to correct two numbering errors. Part 23 inserted by item 2 of Schedule 2 to the *Treasury Laws Amendment (2017 Measures No. 1) Act 2017* is renumbered as Part 24 and the only section contained in that Part is renumbered as section 308. Part 26 inserted by item 1 of Schedule 12 to the *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* is renumbered as Part 26A and the only section contained in that Part is renumbered as section 314A. These amendments ensure that every Part and every section in the *Australian Securities and Investments Commission Act 2001* have a unique number. [Schedule #, items 3 to 6, Parts 23 and 26 and sections 302 and 315 of the Australian Securities and Investments Commission Act 2001]

#### Amendments to the Competition and Consumer Act 2010

* 1. Part 1 of Schedule # amends the *Competition and Consumer Act 2010* to clarify that classes of matters may be referred to a Division of the Australian Competition and Consumer Commission (ACCC). This reflects the ACCC’s existing practice of using specialist Divisions to consider similar matters. It streamlines the process for referring matters to a specialist Division by ensuring that a separate referral is not required in respect of every matter. The Chairperson has the power to vary or revoke a direction. The amendments also gives the ACCC the flexibility to continue to consider any matters falling into a class of matters referred to a Division that is different from the Division to which the maters were referred. [Schedule #, items 8 to 10, paragraph 8A(6)(b) and subsections 19(2), 19(3A) of the Competition and Consumer Act 2010]
  2. For the avoidance of doubt, the new law states that a directions made by the ACCC to refer matters to a Division is not a legislative instrument. This subsection is merely included to assist readers. It is not an actual exemption from that provision. [Schedule #, item 11, subsection 19(8) of the Competition and Consumer Act 2010 ]
  3. Further amendments are made to streamline the process for varying a notice to produce information issued under sections 51ADD or 95ZK of the *Competition and Consumer Act 2010*. The existing process for varying a notice issued under sections 51ADD or 95ZK is administratively burdensome as the variation must be made by the ACCC (for section 51ADD notices) or the Chairperson (for section 95ZK notices), rather than a member of the ACCC. This disadvantages recipients of the notices as most of the variations are to extend the time period for producing information. The amendments streamline the process for varying a notice by providing that a single member of the ACCC may make the variation. [Schedule #, items 12, 13 and 15, subsections 51ADE(2) to (5), 95ZK(3A) and (3B) of the Competition and Consumer Act 2010]
  4. The process for extending the time period in a section 51ADD or 95ZK notice to produce is further streamlined by including a delegation power. A member of the ACCC may delegate the power to extend the time period specified in a notice to an SES employee or an acting SES employee of the ACCC. This delegation power is appropriate as it is sufficiently narrow, and will only apply to variations of time. Further, SES employees and acting SES employees will have the requisite knowledge to assess the suitability of granting the variation. Under the new provisions, delegates must also comply with any direction given by the member of the ACCC. [Schedule #, items 13 and 16, subsections 51ADE(3) to (5), 95ZK(10) and (11) of the Competition and Consumer Act 2010]
  5. The amendments to the process for varying notices to produce mirror recent amendments to the process for varying section 155 notices in the Treasury Laws Amendment (2019 Measure No. 1) Bill 2019.
  6. Part 1 of Schedule # also corrects an error in the provisions governing collective bargaining notices. Section 93AB contains two collective bargaining notification frameworks – one that applies to the cartel provisions (subsection 93AB(1A)) and one that applies to the competition provisions in Part IV (subsection 93AB(1)). The framework for the cartel provisions was inserted after the framework for the competition provisions was established.
  7. The requirements for collective bargaining notices in the remainder of section 93AB were intended to apply to both notification frameworks. However, the section reference in subsection (9) was not amended after the introduction of the cartel provision notification framework. Part 1 correct this section reference. [Schedule #, item 14, subsection 93AB(9) of the Australian Securities and Investments Commission Act 2001]

#### Amendments to the Corporations Act 2001

*Amendments to the external administration provisions*

* 1. The Schedule makes several amendments to the external administration provisions.
  2. First, it clarifies how the rules relating to the transfer of books operate where an external administrator is appointed concurrently with the controller and the controller ceases to act:
* if at the time the controller ceases to act, there is a new appointment of a registered liquidator (either as controller or external administrator), the former controller must transfer the books to the new appointee within 5 business days after the appointment; and
* if at the time a controller ceases to act, there is no new appointment of a registered liquidator, the ‘former controller’ must transfer the books to the existing external administrator within 5 business days after ceasing to act.

***[Schedule #, items 18 and 19, paragraph 422C(1)(c) and subsections 422C(2) and (2A) of the Corporations Act 2001]***

* 1. Second, it amends the reporting requirements for administrators of a deed of company arrangement in section 445HA of the *Corporations Act 2001* to require them to lodge with ASIC, in the prescribed form, a copy of the notice of contravention of the deed that was given to creditors. This information is already prepared as it must be provided to creditors under subsection 445HA(2). The change enables ASIC to approve a form, thereby promoting consistency. It also provides ASIC with information to assist it to monitor instances where there is, or is likely to be, a material contravention of a deed of company arrangement. [Schedule #, item 21, subsection 445HA(2) of the Corporations Act 2001]
  2. Third, the requirement for a notice of contravention given by a director to an administrator to be in a prescribed form is repealed. There is no form that is currently prescribed and ASIC has indicated that it has no intention to prescribe a form in the future. [Schedule #, item 20, subsection 445HA(1) of the Corporations Act 2001]
  3. Fourth, Part 1 of Schedule # amends section 90-26 of the Insolvency Practice Schedule to give the Court the discretion to extend the review period where it appoints a reviewing liquidator. Formerly, the Court only had this discretion in circumstances where it appointed a replacement reviewing liquidator. [Schedule #, item 29, paragraph 90-26(4)(c) of Schedule 2 to the Corporations Act 2001]

*Other miscellaneous amendments to the Corporations Act 2001*

* 1. Part 1 also corrects several drafting errors and updates the drafting of various provisions so that they accord with modern drafting conventions.
  2. It corrects the penalty in the small business guide in Part 1.5 of the *Corporations Act 2001* to clarify that a director who fails to perform their duties may be guilty of a criminal offence with a penalty of up to 15 years imprisonment. The penalty for directors was increased to 15 years imprisonment in the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2018* but the small business guide, which is not operational, was not updated. The amendment in this Bill ensures that the small business guide is consistent with the Act. [Schedule #, item 17, paragraph 5.3 of the small business guide in Part 1.5 of the Corporations Act 2001]
  3. Part 1 also inserts a new item into the table in the outline of Part 7.10A. This Part was inserted by the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2017* to set up an external dispute resolution scheme for financial complaints but the outline was not updated at that time. [Schedule #, item 22, table item 10A in section 760B of the Corporations Act 2001]
  4. Amendments are made to bring the delegation powers in sections 890C, 1101J and 1345A of the *Corporations Act 2001* into line with modern drafting conventions. These sections provide that various entities and individuals can delegate ‘any’ of the delegable functions and powers to certain specified persons. Part 1 amends these sections to allow for the delegation of ‘all or any’ of the functions and powers. The amendments clarify the operation of existing delegation powers and make it clear that all the relevant functions and powers can be delegated together. They do not alter the scope of the functions or powers that may be delegated or the persons to whom those functions or powers may be delegated. Any delegations or regulations in force before this change remains in force. [Schedule #, items 23 and 25 to 28, subsections 890C(3), 1101J(1), 1345A(1) to (1AA) and 1667(1) and (2) of the Corporations Act 2001]
  5. Finally, amendments are made to remove the hyphen from the phrase ‘self-managed superannuation fund’ in section 1053 of the *Corporations Act 2001* to ensure the term is consistently expressed across the Act. [Schedule #, item 24, paragraphs 1053(4)(a) to (c) of the Corporations Act 2001]

#### Amendments to the International Monetary Agreements Act 1947

* 1. Part 1 updates the note to the definition of IMF loan agreement 2016 in section 3 of the *International Monetary Agreements* *Act 1947* to list the Australian Treaty Series number of the Treaty. [Schedule #, item 30, note to the definition of “IMF loan agreement 2016” in section 3 of the International Monetary Agreement Act 1947]
  2. There has also been a renewal of the IMF’s New Arrangements to Borrow. An amendment is made to the definition of ‘New Arrangements to Borrow’in section 3 to include the new decision number. The new decision has comprised a treaty action for the purposes of Australia’s domestic treaty-making process. As a result, a note has been inserted to list the Australian Treaty Series number of the Treaty. [Schedule #, item 31, the note to the definition, of ‘New Arrangements to Borrow’ in section 3 of the International Monetary Agreement Act 1947]

#### Amendments to the National Consumer Credit Protection Act 2009

* 1. Part 1 amends the definition of financial year in subsection 100(6) of the *National Consumer and Credit Protection Act 2006* to make it clear that the definition of financial year in section 323D of the *Corporations Act 2001* only applies to bodies corporate to which that section applies. In all other cases, a financial year means a year ending on 30 June. [Schedule #, item 32, paragraphs 100(6)(a) and (b) of the National Consumer Credit Protection Act 2009]
  2. Part 1 corrects an error in the section reference in existing section 151. That section deals with a lessor’s obligation to assess unsuitability, but refers to section 130, dealing with reasonable inquiries a credit provider must make. Paragraph 151(d) is amended to instead refer to section 153, which deals with reasonable inquiries that a lessor must make. [Schedule #, item 33, paragraph 151(d) of the National Consumer Credit Protection Act 2009]
  3. Part 1 also expands existing paragraph 263(d) of *the National Consumer Credit Protection Act 2009* to capture alleged or suspected contraventions of the laws referred to in that provision. This amendment is consistent with the initial policy intention of the provision as expressed in paragraph 6.99 of the explanatory materials accompanying the National Consumer Credit Protection Bill 2009. The amendment to paragraph 263(d) applies to contraventions that have occurred before, on or after the commencement of the item. [Schedule #, items 34 and 44, paragraph 263(d) and Schedule 10 to the National Consumer Credit Protection Act 2009]
  4. A reference to the *Bankruptcy Act 1966* is also updated to reflect the modern drafting practice of only referring to the full name of the Act once in a subsection. [Schedule # item 35 subsection 50(8) of the National Credit Code]
  5. Part 1 corrects an anomaly in paragraph 150(1)(b) of the National Credit Code to provide that, if a comparison rate is included ‘or required to be included’ under Part 10 of the National Credit Code, then the advertisement must comply with Division 2 of that Part. This ensures that the provision continues to apply to persons that breach their requirement to include the comparison rate. [Schedule #, item 36, paragraph 150(1)(b) of the National Credit Code]
  6. Part 1 also amends section 150 of the National Credit Code to provide that, if the advertised credit would be provided under a small amount credit contract, then subsection 150(3) (regarding the requirements for an advertisement that includes an annual percentage rate) does not apply. Small amount credit contract must not charge interest and therefore should not include an annual percentage rate. [Schedule #, item 37, subsection 150(3A) of the National Credit Code]

#### Amendments to the National Consumer Credit (Transitional and Consequential Provisions) Act 2009

* 1. Schedule 3 to the *National Consumer Credit (Transitional and Consequential Provisions) Act 2009* is repealed. This Schedule amended a Schedule that commenced on 1 April 2010, made its amendments and then became spent. A cross-reference to the Schedule in a table is also removed. [Schedule #, items 38 and 43, subsection 2(1) and Schedule 3 to the National Consumer Credit (Transitional and Consequential Provisions) Act 2009]
  2. References to the *Legislative Instruments Act 2003* are also updated so that they refer to the *Legislation Act* 2003. The *Legislative Instruments Act 2003* was renamed the *Legislation Act 2003* as a result of reforms in 2015. [Schedule #, items 39 to 41, subsection 6(4) and paragraph 6(5)(a) of the National Consumer Credit (Transitional and Consequential Provisions) Act 2009 and subitem 41(6) of Schedule 2 to that Act]
  3. A spelling error (‘one-fourtieth’) is also corrected. [Schedule #, item 42, subitem 43(2) of Schedule 2 of the NCCP Transitional Act]

#### Amendments to the Product Grants and Benefits Administration Act 2000

* 1. Part 1, together with the *Treasury Laws Amendment (Measures for a Later Sitting) Regulations 2019*, effect red tape reduction by moving the only requirement currently prescribed in the *Product Grants and Benefits Administration Regulations 2000* into the *Product Grants and Benefits Administration Act 2000*.
  2. Regulation 4B of the *Product Grants and Benefits Administration Regulations 2000* requires that an applicant for registration for entitlement to a product stewardship (oil) benefit must comply with relevant Commonwealth, State or Territory legislation relating to oil recycling operations or enterprises.
  3. Regulation 4B also prescribes that the Commissioner must refuse such an application if an authority informs the Commissioner that the applicant does not comply with the legislation. Part 1 inserts an equivalent requirement into subsection 9(3A) of the *Product Grants and Benefits and Administration Act 2000*. The *Treasury Laws Amendment (Measures for a Later Sitting) Regulations 2019* will then repeal the *Product and Benefits Administration Regulations 2000*. *[*Schedule #, item 46, paragraph 9(3A)(ba) of the Product and Benefits Administration Act 2000]
  4. An additional amendment is made to section 9 of the *Product Grants and Benefits and Administration Act 2000* to clarify that the recycling obligations relate to oil. *[*Schedule #, ***item*** 45, subparagraph 9(3A)(b)(i) of the Product and Benefits Administration Act 2000]
  5. The amendments apply to applications made after the commencement of Part 1 of the Bill. The Regulations continue to apply to any applications made before Part 1 commences. *[*Schedule #, item 47]

#### Amendments to the Superannuation Industry (Supervision) Act 1993

##### Involved in a contravention

* 1. Part 1 amends the *Superannuation Industry (Supervision) Act 1993* to clarify when a person has been ‘involved’ in a contravention of a provision, other than an offence provision.
  2. A person is involved in a contravention of a provision that is not an offence if, and only if, the person:
* has aided, abetted, counselled or procured the contravention;
* has induced, whether by threats or promises or otherwise, the contravention;
* has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
* has conspired with others to effect the contravention.

[Schedule #, items 48 and 51, sections 17 and 194 of the Superannuation Industry (Supervision) Act 1993]

* 1. This amendment applies to contraventions happening at or after the commencement of the amendment. [Schedule #, item 49]

##### Applying the fee cap on low superannuation balances

* 1. Part 1 of Schedule # makes amendments to apply the existing fee cap on low balances when a product is only held for part of an income year.
  2. The *Treasury Laws Amendment (Protecting Your Superannuation) Act 2019* amended the *Superannuation Industry (Supervision) Act 1993* to apply a cap on the fees that could be charged by a superannuation trustee when the balance of a product held by a member was less than $6,000 at the end of the year. The Act did not provide for a fee cap where the member has a balance of less than $6,000 but ceases holding the product part way through the fund’s income year.
  3. Part 1 amends the *Superannuation Industry (Supervision) Act 1993* to replace the current application provision at paragraph 99G(1)(b) with an application provision that contemplates that the member ceases holding the product part way through the fund’s income year and at that time the balance of the product is less than $6,000. [Schedule #, item 50, paragraph 99G(1)(b) of the Superannuation Industry (Supervision) Act 1993]

#### Amendments to the Superannuation (Unclaimed Money and Lost Members) Act 1999

* 1. Part 1 of the Bill repeals subsections 16(2), 20QB(3) and 24C(3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. These subsections are not required because the information collected is not used for any purpose. [Schedule #, items 52, 58 and 59, subsections 16(2), 20QB(3) and 24C(3) of the Superannuation (Unclaimed Money and Lost Members) Act 1999]
  2. Part 1 also amends the definition of ‘inactive low balance account’ so that an account is not an ‘inactive low balance account’ if the member has elected to maintain insurance on that account by making an election under subsection 68AAA(2) of the *Superannuation (Industry) Supervision Act 1993*. This amendment applies from 30 June 2019. [Schedule #, items 53 and 54, subparagraph 20QA(1)(a)(viii) of the Superannuation (Unclaimed Money and Lost Members) Act 1999]
  3. Further amendments are made to two of the exceptions to the definition of ‘inactive low balance account’ to ensure that they give effect to the initial policy intent.
  4. First, the exception relating to member’s elections is revised. Formerly, the *Superannuation (Unclaimed Money and Lost Members) Act 1999* provides that the member may make an election to the Commissioner if the member does not want his or her account to be an ‘inactive low balance account’. This is impractical because it is the superannuation provider who determines that the account is an inactive low balance account. For this reason, the exception is amended so that the member makes this election directly to the superannuation provider rather than the Commissioner. [Schedule #, item 55, subparagraph 20QA(1A)(b)(iv) of the Superannuation (Unclaimed Money and Lost Members) Act 1999]
  5. This amendment applies from 30 June 2019. However, section 7 of the *Acts Interpretation Act 1901* provides that an election made prior to the commencement of these amendments is still valid.
  6. Second, Part 1 amends the exceptions to the definition of ‘inactive low balance account’ to remove a redundant provision. Currently, the *Superannuation (Unclaimed Money and Lost Members) Act 1999* provides that an account is not an inactive low balance account if the superannuation provider is owed an amount in respect of the member. This provision is inoperable and therefore redundant. [Schedule #, items 56 and 57, subparagraphs 20QA(1A)(b)(iv) and 20QA(1A)(b)(v) of the Superannuation (Unclaimed Money and Lost Members) Act 1999]

#### Amendments to the Treasury Laws Amendment (2018 Measures No. 4) Act 2019

* 1. Part 1 of the Bill amends the *Treasury Laws Amendment (2018 Measures No. 4) Act 2019* to update the commencement rule for Part 2 of Schedule 3 to that Act.
  2. ​The *Treasury Laws Amendment (2018 Measures No. 4) Act 2019* received Royal Assent on 1 March 2019. Part 2 of Schedule 3 to that Act includes amendments requiring employers to report salary sacrificed amounts paid to their employees' superannuation funds under the Single Touch Payroll reporting regime.
  3. The commencement of Part 2 of Schedule 3 is contingent on the commencement of the salary sacrifice measure contained in Schedule 2 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in* Superannuation *Measures No. 2) Act 2019*. The Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017 was introduced into the House of Representatives on 14 September 2017. That Bill lapsed when the Parliament was prorogued prior to the 2019 federal election.
  4. The salary sacrifice measure has now been reintroduced as Schedule 7 to the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019.
  5. The amendments in this Bill update the commencement rule for Part 2 of Schedule 3 to the *Treasury Laws Amendment (2018 Measures No. 4) Act 2019* to reflect that the salary sacrifice measure is now contained in Schedule 7 to the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019. Part 2 of Schedule 3 will now commence on the later of the commencement of Schedule 7, or the commencement of the amendments in this Bill (being the day after they receive the Royal Assent). [Schedule #, item 60, subitem 2(1) (table item 4) of Treasury Laws Amendment (2018 Measures No. 4) Act 2019]
  6. The revised commencement rule ensures that the reporting requirements in Part 2 of Schedule 3 apply prospectively from both the time that both the salary sacrifice measure and the amendments to the revised commencement rule commence.

#### Amendments to the Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019

* 1. Part 1 amends the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* to correct a referencing error in item 38 to Schedule 3 of that Act.
  2. Item 30 of Schedule 3 of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* inserted paragraph 20QA(1)(a) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
  3. However, item 38 of *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* incorrectly states that paragraph 20QA(1)(a) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is inserted by item 8.
  4. Part 1 of the Schedule corrects this incorrect reference. [Schedule #, item 61, subitem 38(2) of Schedule 3 to the Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019]

### Part 2 – Amendments commencing first day of the next quarter

#### Amendments to the Fringe Benefits Tax Assessment Act 1986

##### Meaning of taxi

* 1. The Bill amends the definition of ‘taxi’ in the *Fringe Benefits Tax Assessment Act 1986* to resolve administratively difficulties with the former definition which resulted from ride sharing providers entering entry into the market.
  2. Formerly, the *Fringe Benefits Tax Assessment Act 1986* defined a taxi as ‘a motor vehicle licenced to operate as a taxi’. As a result of ride sharing providers entering into the market, this has become difficult to administer as the meaning of ‘licensed to operate as a taxi’ is highly contentious and may differ considerably between the states and territories depending on their licensing laws.
  3. To avoid these difficulties, the new law replaces references to a ‘taxi’ with ‘a car used for taxi travel (other than a limousine)’. The term ‘taxi travel’ is defined as having the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*, namely, ‘travel that involves transporting passengers by taxi or limousine, for fares’. This preserves the existing policy of covering vehicles used for travel involving transporting passengers for a fare by way of a car but not including luxury cars such as limousines. [Schedule #, items 62 to 66, 68 and 69, paragraph 7(7)(a), subparagraphs 8(2)(a)(i) and 8(2)(a)(ia), paragraph 47(6)(aa)(i), subsections 58Z(1) and (2) and definition of ‘taxi’ and definition of ‘taxi travel’ in subsection 136(1) of the Fringe Benefits Tax Assessment Act 1986]
  4. This amendment applies in relation to the provision of a fringe benefit on or after the day of Royal Assent. [Schedule #, item 70]

##### Meaning of ‘fringe benefit’

* 1. The Bill amends an incorrect section reference in the definition of ‘fringe benefit’ in section 136 of the *Fringe Benefits Tax Assessment Act* *1986*.
  2. Formerly, the definition of ‘fringe benefit’ excluded a payment made, or liability incurred, to a person to the extent that the payment or liability is deemed to not be income because of subsection 65(1A) of the *Income Tax Assessment Act 1936.* Subsection 65(1A) of the *Income Tax Assessment Act 1936* provided that if an amount paid to an associated person is not allowed as a deduction by the Commissioner then that amount is deemed not to be income of the associated person.
  3. Subsection 65(1A) was repealed by the *Tax Laws Amendment (Repeal of* *Inoperative Provisions) Act 2006* and section 26-30 of the *Income Tax Assessment Act 1936* now governs the non-deductibility of relative’s travel expenses*.*
  4. Accordingly, the reference to subsection 65(1A) in the definition of ‘fringe benefit’ is replaced with a reference to section 26-35. [Schedule #, item 67, paragraph (p) of the definition of ‘fringe benefit’ in subsection 136(1) of the Fringe Benefits Tax Assessment Act]
  5. The amendment applies to Fringe Benefit Tax years starting on 1 April 2014 and later Fringe Benefit Tax years. This makes the amendment retrospective but only as far back as the Fringe Benefit Tax amendment period extends. Taxpayers have been applying the law in the way that it was intended to apply. The retrospective application ensures that the law aligns with returns that have been lodged and ensures that fringe benefits tax is not payable on non-deductible payments to relatives. As such, it does not adversely affect the rights or interests of stakeholders. [Schedule #, item 70]

#### Amendments to the Income Tax Assessment Act 1997 and the Income Tax (Transitional Provisions) Act 1997

##### Amendments to the rules relating to gifts and contributions

* 1. Part 2 amends the listing of the Royal Society for the Prevention of Cruelty to Animals Western Australia in the *Income Tax Assessment Act 1997* as a deductible gift recipient to reflect its change of name. This amendment applies in relation to gifts or contributions made on or after 24 July 2018, the date on which its name changed. While the application of the amendment is retrospective, it does not adversely affect the rights of any entity. [Schedule #, items 71 and 72, table item 4.2.10 in subsection 30-45(2) of the Income Tax Assessment Act 1997]
  2. Part 2 also removes a requirement for a donor of cultural property to advise the Art Secretary if it elects to spread the tax deduction associated with the donation of cultural property. This information is not used by the Arts Secretary and accordingly the requirement imposes an unnecessary regulatory burden. Minor consequential amendments are made to remove references to the repealed requirement. [Schedule @, items 78 to 80, the note to section 30-248(5) and sections 30-248(5) and 30-249D of the Income Tax Assessment Act 1997]

##### Complying superannuation entities - streamlining of terms

* 1. Amendments are made to a number of provisions that reference ‘complying superannuation fund’, ‘complying approved deposit fund’ and ‘pooled superannuation trust’ so that they use the collective term ‘complying superannuation entity’. This accords with modern drafting practices and improves the readability of the provisions [Schedule #, items 76 to 78, 82 to 86, 92 to 101, 110 and 117, subparagraph 70-10(2)(b)(i), table item 12 in section 109-60, table item 14 in section 112-97, paragraph 207-45(d), subparagraphs 210-10(1)(b)(i) and 210-170(1)(b)(ii), paragraphs 210-170(2)(a) and 230-460(11)(b), subsections 295-10(1), 295-25(1), 295-85(1) and 295-90(1), section 295-105, paragraph 295-173(a), subsection 295-545(1), the note to subsection 295-555(1), section 727-152 and paragraph (a) of the definition of ‘complying superannuation life insurance policy’ in subsection 995-1(1) of the Income Tax Assessment Act 1997]

##### Company loss recoupment rules - concessional tracing rules for widely held entities with a new interposed entity

* 1. Part 2 of the Schedule amends the continuity of ownership test in the *Income Tax Assessment Act 1997* so that the interposition of a holding company between the tested company and a less than 10 per cent direct stakeholder does not cause a failure of the continuity of ownership test.
  2. A company can deduct prior year losses only if it satisfies the continuity of ownership test or the similar business test. Division 166 of the *Income Tax Assessment Act 1997* makes it easier for widely held companies to satisfy the continuity of ownership test by, among other things, making it unnecessary for the company to trace through to the beneficial owners of certain stakes.
  3. Section 166-225 of the *Income Tax Assessment Act 1997* applies where a company has a direct stake in the tested company that carries rights to less than 10 per cent of the voting power, dividends and capital distributions. In these circumstances, it is not necessary to trace through to the ultimate beneficial owners of the company. This is achieved by treating all direct stakes of less than 10 per cent as being held by a single notional entity that is a person.
  4. Further, section 166-230 of the *Income Tax Assessment Act 1997* provides a similar concession where a stakeholder has an indirect stake in the tested company that carries rights to less than 10 per cent of the voting power, dividends and capital distributions. In these circumstances, the ownership tracing rules are applied as though the top interposed company was a single person.
  5. These amendments provide that if, during the test period, a holding company is interposed between the tested company and the less than 10 per cent direct stakeholders, the stake is attributed to the interposed company from that time onwards, rather than to the single notional entity to whom the stake was initially attributed to under section 166‑225 of the *Income Tax Assessment Act 1997*. [Schedule #, item 80, subsections 166‑230(5) and (6) of the Income Tax Assessment Act 1997]
  6. As a result, the interposition of a holding company between the tested company and a less than 10 per cent direct stakeholder does not, of itself, cause a failure of the continuity of ownership test.
  7. This amendment applies to the interposition of an entity that occurs on or after 1 July 2018. The amendments have been sought by affected taxpayers so that they do not need to undertake time consuming and unnecessary tracing where the ultimate beneficial ownership of the tested company has not changed. No taxpayers is disadvantaged by the retrospective application of these amendments. [Schedule #, item 81, subsections 166‑230(5) and (6) of the Income Tax Assessment Act 1997]

##### Superannuation – downsizer

* 1. The amendments make three changes to the section 292-102 of the *Income Tax Assessment Act 1997* to ensure that the provisions relating to downsizer contributions operate as intended.
  2. The first change ensures that an individual can make a downsizer contribution in respect of the proceeds from a property that was held by their spouse where the property is a pre-CGT asset that would have been subject to the main residence exemption if it had been acquired after 1 September 1985.
  3. One of the eligibility requirements to make a downsizer contribution is that the individual for whom the contribution is made must satisfy a main residence test. This test is satisfied where the capital gain or loss made by an individual in respect of the disposal of the interest in the dwelling is effectively exempted by the main residence provisions under Subdivision 118-B of the *Income Tax Assessment Act 1997*. The downsizer rules apply two legislative assumptions to ensure that individuals can satisfy this test where the interests in a dwelling are:
* not subject to capital gains tax (including Subdivision 118-B of the *Income Tax Assessment Act 1997*) because they were acquired prior to 20 September 1985; or
* held by the individual’s souse, rather than by the individual.
  1. However, the existing assumptions do not apply correctly for disposals of interests in a dwelling that were both acquired prior to 20 September 1985 and held by the individual’s spouse.
  2. The amendments address this issue by updating the assumption for interests held by an individual’s spouse. In such cases, the individual is assumed to have acquired the interest on or after 20 September 1985 in working out whether any capital gain or loss from the interest would be disregarded under Subdivision 118-B of the *Income Tax Assessment Act 1997*. [Schedule #s, item 87, subparagraph 292-102(1)(d)(ii) of the Income Tax Assessment Act 1997]
  3. The second change ensures that the cap on the amount of downsizer contributions that an individual can make is calculated correctly where their spouse has previously made a downsizer contribution in relation to another property.
  4. An individual can make downsizer contributions up to the lesser of $300,000 and the amount of the capital proceeds that they or their spouse received from the disposal of their property. Although both spouses can make contributions from the disposal of one property, the total contributions they make between them cannot be more than the capital proceeds from the disposal of their interests in that property (for example, if a couple receives $500,000 for the disposal of their property and one spouse makes a downsizer contribution of $300,000, the other spouse can only make a downsizer contribution of up to $200,000).
  5. However, there is a technical issue with the way the maximum contributions are calculated where an individual’s spouse has already made a downsizer contribution in relation to the disposal of an interest in another property. Specifically, such contributions are treated in the same way as disposals from the same property, and as such reduce the maximum amount of the downsizer contributions that an individual can make.
  6. The amendments correct this issue by ensuring that the maximum amount of downsizer contributions that an individual can make are only reduced by their spouse’s downsizer contributions if their spouse’s contributions were made in respect of the disposal of interests in the same property. [Schedule #, item 988, paragraph 292-102(3)(b) of the Income Tax Assessment Act 1997]
  7. The first two changes apply in relation to a disposal of an ownership interest in a dwelling if the contract for the disposal is entered into on or after 1 July 2018. [Schedule #, item 89]
  8. This application is aligned with that of the original amendments that introduced the downsizer provisions, meaning that they can apply in respect of disposals of interests that have already occurred. This retrospective application is appropriate as the changes are wholly beneficial to taxpayers (because they allow them to make downsizer contributions when they would otherwise be ineligible to do so).
  9. The third change addresses a different issue with the way that the maximum amount of downsizer contributions are calculated. This change ensure that, for working out the maximum amount of downsizer contributions that an individual can make, the market value substitution rule in section 116-30 of the *Income Tax Assessment Act 1997* (which applies generally in working out an amount of capital proceeds) cannot increase the amount of capital proceeds received in relation to the disposal of their ownership interests in a dwelling. [Schedule #, item 90, subsection 292‑102(3A) of the Income Tax Assessment Act 1997]
  10. This outcome is consistent with the original intent of the cap on downsizer contributions, which were intended to be based on the actual proceeds received from the sale of an individual’s home. The market value substitution rule continues to apply more generally in working out any actual tax liability that an individual or their spouse has in respect of the disposal of their interest in a dwelling (although such disposals will generally be exempt because of the main residence exemption in Subdivision 118-B of the *Income Tax Assessment Act 1997*).
  11. The change applies in relation to a disposal of an ownership interest in a dwelling if the contract for the disposal is entered into on or after the day the amendments receive Royal Assent. [Schedule #, item 96]
  12. This ensures that the amendments apply on a prospective basis only, which is appropriate as they can reduce the maximum amount of downsizer contributions that an individual can make.

##### Rollover Restructure Threshold Change

* 1. Part 2 amends section 328-430 of the *Income Tax Assessment Act 1997* to allow an entity that is connected with or an affiliate of a small business entity to access the small business restructure rollover in relation to an interest of the small business entity even if the small businesses entity has aggregated turnover of between $2 million to $10 million. Previously, due to a drafting error, while the rollover was available to the entity carrying on the business in this situation, entities associated with a small business entity were only able to access the rollover if the small business entity was a CGT small business entity – ie. had aggregated turnover of less than $2 million. [Schedule #, item 102, subparagraph 328‑430(1)(d)(ii) of the Income Tax Assessment Act 1997]
  2. The amendment commences from the date of commencement of the Tax Laws Amendment (Small Business Restructure Roll-over) Bill 2016. The retrospective application is wholly beneficial to affected taxpayers and does not adversely affect the rights of any taxpayer.[Schedule #, item 103]

##### Correcting section references

* 1. Part 2 also corrects section references in the *Income Tax Assessment Act 1997* and the *Income Tax Transitional Provisions Act 1997*.
  2. Section 705-55 of the *Income Tax Assessment Act 1997* incorrectly refers to a repealed section (former section 705-50) rather than section 705-47. This section reference is corrected. [Schedule #, item 109, section 705-55 of the Income Tax Assessment Act 1997]
  3. An incorrect cross-reference in subsection 705‑75(1A) is also amended and some minor structural improvements are made to that section. The cross-referencing error arose when the consolidation tax cost setting rules were amended in 2018. [Schedule #, item 105 to 107, section 705‑75 of the Income Tax Assessment Act 1997]
  4. The 2018 amendments excluded liabilities that give rise to an income tax deduction from the ‘allocable cost amount’ (with some limited exceptions). The ‘allocable cost amount’ is one of the elements used to reset the tax costs of the assets of an entity when that entity joins a consolidated group or multiple entry consolidated group.
  5. Consistent with the 2018 amendments, the amendments apply in relation to an entity that becomes a subsidiary member of a consolidated group or multiple entry consolidated group under an arrangement that commenced on or after 1 July 2016. [Schedule #, item 108, section 705‑75 of the Income Tax Assessment Act 1997]
  6. Retrospective application is appropriate in this instance to ensure that taxpayers who have been applying the law as intended are not disadvantaged and to prevent other taxpayers from obtaining unexpected windfall gains. Further, retrospective application is necessary to maintain symmetry between the entry and exit tax cost setting rules. That is, it prevents unintended consequences from arising for future exit tax cost setting calculations when a subsidiary member subsequently leaves the consolidated group or multiple entry consolidated group.
  7. There is also an error in a section reference in subsection 716‑440(1) of the *Income Tax Assessment Act 1997*. This subsection sets out the conditions for when special CGT rules apply to a foreign-owned entity joining a consolidated group. One of these criteria is designed to be that the section 701-10 of the *Income Tax Assessment Act 1997* would apply but for the special CGT rules in subsection (2) (which disapply it). However, there is a mistake in that criteria and it references subsection (3) rather than subsection (2). The Bill corrects this error. [Schedule #, item 109, subsection 716-440(1) of the Income Tax Assessment Act 1997]
  8. An incorrect cross-reference in the consolidation rules is paragraph 716-440(1)(e) of the *Income Tax Assessment Act 1997* is also corrected. [Schedule #s, item 109, subsection 716‑440(1)(e) of the Income Tax Assessment Act 1997]
  9. Finally, section 40-830 of the *Income Tax Assessment Act 1997* has been renumbered to section 40-840 of the *Income Tax Assessment Act 1997*. This amendment fixes a numbering. [Schedule #, item 120, section 40-840 of the Income Tax (Transitional Provisions) Act 1997]

##### Meaning of foreign equity distribution

* 1. Part 2 of the Schedule corrects an error with the meaning of foreign equity distribution by replacing ‘a foreign resident’ with ‘not a Part X Australian resident (within the meaning of Part X of the *Income Tax Assessment Act 1936*)’. [Schedule #, item 111, section 768-10 of the Income Tax Assessment Act 1997]
  2. Subdivision 768­‑A of the *Income Tax Assessment Act 1997* treats certain income received by an Australian corporate tax entity from a foreign resident company as non-assessable non-exempt income.
  3. Subdivision 768­‑A of the *Income Tax Assessment Act 1997* replaced the now repealed section 23AJ of the *Income Tax Assessment Act 1936* in 2014 as part of a modernisation and update of the exemption. In doing so the condition that the paying company be ‘not a Part X Australian resident’ was changed to being a ‘foreign resident’. The change in wording inadvertently resulted in some dividends paid by dual resident companies to Australian residents being treated as assessable income for the Australian resident.
  4. To ensure that no taxpayers are disadvantaged by the change in meaning, this amendment is being applied retrospectively to the commencement date of the original provision on 17 October 2014. No taxpayer are disadvantaged by retrospective application of the amendments. [Schedule #, item 112]

##### Cross-border transfer pricing guidance

* 1. Part 2 updates the references in subsection 815-135(2) of the *Income Tax Assessment Act 1997*. [Schedule #, items 113 to 115, paragraphs 815‑135(2)(a) and (aa) of the Income Tax Assessment Act 1997]
  2. On 3 April 2017, the ‘Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Reports’ were incorporated into the ‘OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations’. The consolidated document was subsequently updated on 19 May 2017. Part 2 updates the references to reflect these changes. The amendments apply for the purposes of identifying conditions operating on or after the commencement of this part. [Schedule #, items 116]

#### Amendments to the Taxation Administration Act 1953

##### RBA Amendments

* 1. Part 2 amends the *Taxation Administration Act 1953* to facilitate the Commissioner accounting for more tax debts in running balance accounts. This aligns the accounting treatment for the most common tax debts, such as income tax and business activity statement amounts, for taxpayers and the ATO.
  2. The Commissioner has established a number of running balance accounts to account for tax debts. Most commonly, running balance accounts are established for tax debts notified on business activity statements, as well as associated payments and credits. The current law creates technical difficulties that prevent certain tax debts from being accounted for in a running balance account. For example, the Commissioner has not established a running balance account for income tax debts.
  3. The amendments enable amounts that are the balance of multiple taxation liabilities or credits to be allocated to a running balance account, and amounts within a running balance account to be transferred to a different running balance account. These amendments support the Commissioner accounting for income tax debts in a running balance account. [Schedule #, items 121 to 131, sections 8AAZA, 8AAZAA, 8AAZAB, 8AAZD and 8AAZDA of the Tax Administration Act 1953]
  4. For example, the Commissioner will be permitted to record the net amount payable from a notice of income tax assessment for an individual as one amount on the individual’s running balance account. This is in contrast to the Commissioner having to record primary tax liabilities such as income tax, the Medicare levy and the Medicare levy surcharge, and credits such as pay as you go withholding (PAYGW) and instalments as separate amounts in a running balance account. Each liability and credit would still be separately listed on the individual’s notice of assessment.
  5. The amendments also enable the Commissioner to transition existing tax accounts, including those accounts that are not maintained as running balance accounts, such as income tax accounts, to a running balance account. The Commissioner will be able to do this by determining that the account balance is transitioned to a running balance account. This determination will have the effect that the tax debts, the general interest charge on those debts, and payments, credits and running balance account surpluses that correspond to the balance transferred will be treated as if it had been calculated under the running balance account rules. [Schedule #, items 121 to 131, sections 8AAZA, 8AAZAA, 8AAZAB, 8AAZD and 8AAZDA of the Tax Administration Act 1953]
  6. The broader use of running balance accounts, made possible through these amendments, ensure taxpayers benefit from general interest charge being calculated on the daily balance of the account instead of separately on each primary tax liability.

##### Correcting section references

* 1. Part 2 also corrects a section reference in the note to subsection 8AAZLGB(4) of the *Taxation Administration Act 1953*. [Schedule #, item 132, note to section 8AAZLBG of the Income Tax Assessment Act 1997]

##### Service of documents

* 1. Part 2 makes several amendments to give the force of law to the treaty obligations relating to the service of documents in Article 17 of the OECD Convention on Mutual Administrative Assistance in Tax Matters.
  2. First, the Commissioner is given the power to serve documents on a person at an overseas address if the Commissioner is satisfied that the person has an overseas address and the service is in accordance with an agreement between Australia and the foreign country. The Commissioner does not require the Court’s leave to effect this service. [Schedule #, item 133 to 135, subdivision 255-C in Schedule 1 (heading), section 255-35 in Schedule 1, section 255-40(3) of Schedule 1 to the Taxation Administration Act 1953]
  3. Second, the Commissioner is given the power to serve documents on entities in Australia on behalf of foreign revenue authorities. This power applies when a foreign government agency has made a request for the service of a document on an entity in Australia in relation to taxes imposed under a foreign law and the request is in accordance with an agreement between Australia and the foreign country. Such a request is referred to as a foreign service of document request. [Schedule #, item 119, definition of ‘foreign service of document request’ in subsection 995-1(1) of the Income Tax Assessment Act 1997 and items 137 and 138, heading to Division 263, section 263-55, 263-60 and 263-65 of Schedule 1 to the Taxation Administration Act 1953]
  4. The service of the document is to be effected in the same way as the Commissioner may serve a similar document under a taxation law. If the document is in a foreign language and the entity being served would not be able to understand the document, the Commission must also serve a translation of the document into English or a summary of the document in English. The Commissioner must be satisfied that the translation or summary document is accurate. [Schedule #, item 138, subsection 263-65(3) and (4) of Schedule 1 to the Taxation Administration Act 1953]
  5. Part 2 repeals section 255-45 of Schedule 1 to the *Taxation Administration Act 1953*. This section is redundant as it is covered by the general rules about evidence in Division 350 in Schedule 1 to the *Taxation Administration Act 1953. [*Schedule #, item 136, section 255-45, in Schedule 1 to the Taxation Administration Act 1953]
  6. Part 2 moves sections 255-50 and 255-55 in Schedule 1 to the *Taxation Administration Act 1953* to Division 350. Division 350 contains all of the general rules about evidence. [Schedule #, items 136 and 147, sections 255-50, 255-55, 350-20 and 250-25 in Schedule 1 to the Taxation Administration Act 1953]
  7. Part 2 alsoadds a note to the end of Division 350 in Schedule 1 to the *Taxation Administration Act 1953* which states the division deals with procedural and evidentiary matters relating to proceedings to recover an amount of a tax related liability. [Schedule #, item 146, sections 350-20 and 350-25 in Schedule 1 to the Taxation Administration Act 1953]

*Definition of Employment Secretary*

* 1. Part 2 of the Bill amends the definition of Employment Secretary in the *Income Tax Assessment Act 1997* so that it is consistent with recent machinery of government changes.
  2. The definition of ‘Employment Secretary’ previously referred to the Secretary of the Department administering the *Fair Work* *(State Referral and Consequential and Other Amendments) Act 2009.* Responsibility for that Act has now moved to a different Department. Accordingly, the definition of ‘Employment Secretary’ is amended to refer to the Secretary of the Department responsible for employment policy. [Schedule #, item 118, definition of ‘Employment Secretary’ in subsection 995-1(1) of the Income Tax Assessment Act 1997]
  3. The amendment to the definition of ‘Employment Secretary’ describes the Secretary by using the same language as in the substituted reference order made by the Department and the Administrative Arrangement Order. It does not refer to a particular Act because there are no Acts within that Department’s portfolio which fall within the Department’s core function. Using a description of the Department reduces the likelihood of further amendments being required following future machinery of government changes.
  4. The amendment to the definition in the *Income Tax Assessment Act 1997* also updates the definition of Employment Secretary used in the *Income Tax Assessment Act 1936* and Schedule 1 to the *Taxation Administration Act 1953*. These two Acts both rely on the definition in the *Income Tax Assessment Act 1997* (see subsections 6(1AA) and (1) of *Income Tax Assessment Act 1936* and section 3AA of Schedule 1 to the *Taxation Administration Act 1953*).

##### Application of significant global entity penalties to subsidiary entities

* 1. Part 2 of the Schedule corrects an anomaly in the law by ensuring the appropriate penalties apply for an entity thatis both:
* a subsidiary member of a consolidated group or a multiple entry consolidated group; and
* a significant global entity.
  1. Section 284‑90 of Schedule 1 to the *Taxation Administration Act 1953* determines the amount of a penalty that a taxpayer is liable to pay if the taxpayer gives, for example, a false or misleading statement in relation to a taxation law.
  2. Similarly, section 286‑80 of Schedule 1 to the *Taxation Administration Act 1953* determines the amount of a penalty that a taxpayer is liable to pay if a taxpayer fails to give a return, notice, statement or other document to the Commissioner that is required to be given under a taxation.
  3. The amount of penalty payable by an entity under section 284‑90 or 286‑80 of Schedule 1 to the *Taxation Administration Act 1953* depends on the size of the entity. A higher penalty is payable if, among other things, the entity has received an income tax assessment for the relevant income year and is a significant global entity.
  4. Part 2 corrects this anomaly. [Schedule #, items 139 and 140, paragraphs 284‑90(1A)(a) and 286‑80(4A)(b) of Schedule 1 to the Tax Administration Act]
  5. These amendments apply from the date of introduction in Parliament of this Bill.

##### Changes to the functions of departments following recent machinery of government changes

* 1. Amendments are also made to the table which lists the situations where taxation officers may disclose protected information without committing an offence. These changes were made necessary after the recent machinery of government changes which resulted in some of the functions of the Department of Employment moving to the Attorney-General’s Department.
  2. The amendments split table item 4 into several sub-items. Table item 4 previously covered disclosures from the Student Assistance Secretary or the Employment Secretary that were for the purpose of administering any Commonwealth law relating to pensions, allowances of benefits. However, the functions of the Student Assistance Secretary and the Employment Secretary are now split across two departments. As a result separate table items are required to provide exceptions for the disclosure of information from:
* the Student Assistance Secretary that are for the purpose of administering any Commonwealth law relating to pensions, allowances or benefit; and
* the Employment Secretary for the purpose of administering the *Fair Entitlements Guarantee Act 2012* or any other Commonwealth law relating to pensions, allowances or benefits.

[Schedule #, item 148, subsection 355-65(2) in Schedule 1 (table item 4)]

* 1. For further information about the definition of Employment Secretary, refer to paragraph 1.133 above.

### Part 3 Updates to references to Gazettal notices

* 1. Part 3 of Schedule # updates provisions which refer to Gazettal notices to bring the provisions up-to-date with modern drafting practice. The *Legislative Instruments Act 2003* established a comprehensive regime for the management of all Commonwealth legislative instruments and introduced two main types of instruments (legislative instruments and notifiable instruments). Many of the sections in Treasury Acts were introduced prior to the *Legislative Instruments Act 2003* and need to be updated to ensure that they use the terms legislative instruments and notifiable instruments, rather than notices published in the Gazette.
  2. Amendments are made to the *A New Tax System (Goods and Services Tax) Act 1999* to reflect the fact that Commissioner determinations and tax return requirements are now made by legislative instrument. Inoperative material in section 79-100 of the *A New Tax System (Goods and Services Tax) Act 1999* is also repealed. [Schedule #, items 149-157, subsections 79-100(1), 79-100(2), 79-100(3) and 79-100(6), 131-60(1), subparagraph 151-45(1)(a)(i) and paragraph 162-60(1)(a) of the A New Tax System (Goods and Services Tax) Act 1999
  3. Section 12 of the *Australian Prudential Regulation Authority Act 1998* and section 64 of the *Business Names Registration Act 2011* are amended to require the Minister to use a legislative instrument to direct APRA or ASIC, rather than a notice published in the Gazette. This does not change the substantive effect of either provision because directions to agencies are not disallowable and do not sunset as per the *Legislation (Exemption and Other Matters) Regulation 2015*. [Schedule #, items 158-159, subsections 12(1) and 12(5) of the Australian Prudential Regulation Authority Act 1998]
  4. Section 6A of the *Banking Act 1959* is amended to ensure that the Treasurer uses a legislative instrument to disapply the *Banking Act 1959* to an external Territory, rather than a notice in the Gazette. [Schedule #, items 160-165, section 6A of the Banking Act 1959]
  5. A transitional provision is included to ensure that a direction given under the *Business Names Registration Act* *2011* which is in force immediately before the amendments to section 64 commences continues to remain in force. This means that those directions do not need to be remade by using a legislative instrument. [Schedule #, items 163-165, subsections 64(1) and (5) of the Business Names Registration Act 2011]
  6. Sections 9 and 10 of the *Census and Statistics Act 1995* are amended to require the Statistician to require the completion of a form by way of a legislative instrument instead of a notice published in the Gazette. [Schedule #, items 167-169, paragraph 9(1)(b) and subsection 10(2) of the Census and Statistics Act 1995]
  7. Section 8 of the *Commonwealth Places (Mirror Taxes Act) 1998* is amended to ensure that modifications are prescribed in an instrument and registered on the Federal Register of Legislation. Arrangements, variations and revocations under section 9 must also be made by way of a notifiable instrument. [Schedule #, items 170-171, sections paragraph 8(5)(a) and subsection 9(4) of the Commonwealth Places (Mirror Taxes Act) 1998]
  8. Subsection 63(5) of the *Export Finance and Insurance Corporations Act 1991* is repealed. Subsection 63(5) ensures that the tax concessions provided in respect of holders of Commonwealth issued Treasury bonds and notes do not extend to securities issued by the Export Finance Corporation. The concessions for Commonwealth issued Treasury bonds and notes have since be removed. As a result, subsection 63(5) has become inoperative. [Schedule #, item 172, subsection 63(5) of the Export Finance and Insurance Corporations Act 1991]
  9. An amendment is made to section 6 of the *Federal Financial Relations Act 2009* to require the Minister to use a notifiable instrument to determine certain amounts related to GST revenue. [Schedule #, items 173 and 179, subsections 6(1) and (6) of the Federal Financial Relations Act 2009]
  10. The *Financial Sector (Shareholdings) Act 1998* is also amended to ensure that the Treasurer uses a notifiable instrument to grant, modify or revoke an approval to exceed the shareholding limit in a financial sector company. [Schedule #, items 175-204, subsections 14(1), 14(2), 14(4), 15(1), 15(4), 15(5), 15(7), 15A(5), 16(1), 16(2), 16(2A), 16(6), 17(3), 17(4), 17(6) to (9) and 18(1) to (4) of the Financial Sector (Shareholdings) Act 1998]
  11. The *Fringe Benefits Tax Assessment Act 1986* is updated so that the Commissioner must use a legislative instrument to determine the threshold amount below which an instalment of tax does not become due and payable by the employer. [Schedule #, item 205, subsection 11(3) of the Fringe Benefits Tax Assessment Act 1986]
  12. Amendments are also made to update references to Gazettal notices in the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*. Notifiable instruments are to be used for:
* declarations by the Minister relating to whether a person is an offshore banking unit in section 128AE of the *Income Tax Assessment Act 1936*;
* the Commissioner to call for a return to be made by the master of the ship or the agent of the owner of the ship under section 130 of the *Income Tax Assessment Act 1936*;
* the Commissioner to bring to an end the effect of a class of Tax File Number declarations under subsection 202CA(4) of the *Income Tax Assessment Act 1936*;
* the Commissioner to direct investment bodies around retaining records under section 202EH of the *Income Tax Assessment Act 1936*;
* the Treasurer to declare an overseas aid deductible gift recipient under subsection 30-85(2) of the *Income Tax Assessment Act 1997*;
* the Minister to recognise an event as a disaster under section 30-86 of the *Income Tax Assessment Act 1997*; and
* the Minister to exempt an entity from complying with Australian accounting standards in section 820-960 of the *Income Tax Assessment Act 1997*.

[Schedule #, items 211-2183, 225-228, 231-234 and 238-242 , subsections 128AE(2), 128AE(2AA), 128AE(2AC), 128AE(2A), 128AE(2C), 128AE(3), section 130, paragraph 160ZZZC(a), subsections 202CA(3)-(4), 202EH(1)-(3) of the Income Tax Assessment Act 1936 and subsections 30-85(2)-(4), 30-86(2) and (3), 820-960(1A), 820-960(4) and (5), sections 820-962 and 820-965 and paragraphs 820-990(1)(a) and 820-995(1)(a) of the Income Tax Assessment Act 1997]

* 1. Legislative instruments are to be used to:
* set the date for lodgement of income tax returns under section 161 of the *Income Tax Assessment Act 1936*;
* declare an arrangement to be, or not be, a unit trust under sections 202A or 202AB of the *Income Tax Assessment Act 1936*; and
* require corporate tax entities to give a franking return (sections 214-5 and 214-15 of the *Income Tax Assessment Act 1997*).

[Schedule #, items 219-222, 235 and 237, subsections 161(1) and 161(1A), definition of ‘unit trust’ in section 202A, 202AB, 202B, 202CA, 202CA(3) of the Income Tax Assessment Act 1936 and subsections 214-5(2) and section 214-215 of the Income Tax Assessment Act 1997]

* 1. Amendments are also made to subsection 23AB(4) of the *Income Tax Assessment Act 1936* to reflect the fact that regulations are no longer gazetted but are instead registered. [Schedule #, item 207, subsection 23AB(4) of the Income Tax Assessment Act 1936]
  2. Several redundant provisions in the *Income Tax Assessment Act 1936* are also repealed. First, the definition of ‘Commonwealth securities’ is no longer required as the term ‘Commonwealth securities’ now only appears in paragraph 82SA(5)(b) and the definition adds little to no interpretative value in the context of that provision. Second, subsections 128AB(2), 202B(3) and 202B(4) and Division 7 of Part VA are redundant as there are now standardised provisions for approving forms. [Schedule #, items 206 and 208-210, 224, 229-230, definition of ‘Commonwealth securities’ in subsection 6(1), paragraph 82SA(5)(b), subsections 128AB(1)-(2), subsections 202B(3) and 202B(4), paragraph 202F(1)(f) and Division 7 of Part VA of the Income Tax Assessment Act 1936]
  3. A typographical error in subsection 214-5(6) of the *Income Tax Assessment Act 1997* is also corrected. [Schedule #, item 236, subsection 214-5(6) of the Income Tax Assessment Act 1997]
  4. Amendments are made to the *Insurance Acquisitions and Takeovers Act 1991* to ensure that restraining orders and divestment orders in relation to arrangements resulting in the acquisition or takeover of an insurance business are made and revoked by way of notifiable instrument. [Schedule #, items 243-255, section 43, subsections 44(1), 44(1A) and 44(2), sections 46 and 47, subsection 48(1), section 57, subsections 58(1) and 58(2), section 60, subsections 61(1), 61(2) and 62(1) of the Insurance Acquisitions and Takeovers Act 1991]
  5. The *Insurance Contracts Act 1984* is amended to ensure that regulations made to limit an insurer’s right to refuse to pay an amount in relation to an identified event must now be published on the Federal Register of Legislation instead of being notified in the Gazette. [Schedule #, item 256, subsection 35(3) of the Insurance Contracts Act 1984]
  6. Section 4A of the *International Tax Agreement Act 1953* is updated to require the Treasurer to publish information about a tax treaty coming into force by registering a notifiable instrument. [Schedule #, item 257, subsection 4A(2) of the International Tax Agreements Act 1953]
  7. The *Payment Systems and Netting Act 1998* and the *Payment Systems (Regulation) Act 1998* are also updated. A notifiable instrument must be used by the Reserve Bank of Australia for authorities (and change authorities), exemptions and notifications of action and to declare that a section of the *Payment Systems and Netting Act 1998* does not apply to a particular contract for a short period. A legislative instrument must be used to designate a payment system or declare that the *Payment Systems (Regulation) Act 1998* does not apply to a specified facility or class of facilities. Provisions which were made redundant by the passage of the *Legislation Act* *2003* are also repealed. [Schedule #, items 258-294, subsection 15(1) and 15(2) of the Payment Systems and Netting Act 1998 and subsections 9(3), 11(1)-11(3), 12(1), 12(3) and 12(4), paragraph 13(a) and sections 14, 15, 18, 23, 25, 27, 28, 29 and 30 of the Payment Systems (Regulation) Act 1998]
  8. Further, the requirement for the Minister to set the manner and form in which information is to be produced by an oil producer in the *Petroleum Excise (Prices) Act 1987* is updated so that it is done by way of legislative instrument instead of Gazette. [Schedule #, item 295, subsection 6(2) of the Petroleum Excise (Prices) Act 1987]
  9. In the *Reserve Bank Act 1959*, amendments are made to require the Treasurer to use a legislative instrument to disapply the Act to an external territory or determine denominations of bank notices. [Schedule #, items 296-299, sections 6A and 35 of the Reserve Bank Act 1959]
  10. The *Tax Agent Services Act 2009* is amended to require a notifiable instrument to be used:
* by the Commissioner to approve a scheme where tax agent services can be provided on a voluntary basis without registration; and
* by the Tax Agent Board to notify the public of certain decisions.

[Schedule #, items 300-304, subsections 30-25(1) and 40-20(1), paragraphs 50-10(1)(e) and (2)(e), subsection 50-10(5) and section 60-140 of the Tax Agent Services Act 2009]

* 1. Similar amendments are made to update references to Gazettal notices in the *Taxation Administration Act 1953*. A legislative instrument must now be used to make withholding schedules. A notifiable instrument must be used to vary withholding under PAYGW for a class of entities, alter reporting arrangements for PAYGW amounts, exempt withholders from giving payment summaries under PAYGW, withdraw PAYGW instalment rates for a class of entities, publish the making of a public ruling and advise the public that a local government has chosen to treat its elected councillor as an employee for tax purposes. The Commissioner can also register a notifiable instrument as a form of issue to a taxpayer. The Commissioner has already moved to using legislative and notifiable instruments for these purposes and the amendments reflect existing practice. [Schedule #, items 305-324, subsection 15-15(3), 15-25(1), 15-25(3), 15-25(4), 15-25(5), 16-153(7) and 16-180(2), paragraph 45-90(1)(b), subsection 350-10(1), 357-100, 358-5(4), 358-20(1), 358-20(2), 358-20(4), 362-5(3), 362-20(1)-(3), 446-5(5) and 446-5(5) in Schedule 1 to the Taxation Administration Act 1953]
  2. Finally, the *Terrorism Insurance Act 2003* is updated to require the Minister to use a notifiable instrument to declare a terrorism act or reduce the Commonwealth’s liability by publishing a reduction percentage in the Gazette. [Schedule #, items 325-327, subsections 6(1) and (8) and 38(1) and (6) of the Terrorism Insurance Act 2003]
  3. Transitional provisions are included to preserve all existing instruments, approvals, notices, declarations, decisions, variations and exemptions that were in force immediately before the amendments in Part 3 commence. [Schedule #, items 166, section 171 of the Business Names Registration (Transitional and Consequential Provisions) Act 2011, 333 and 334, ]