

2015

EXPOSURE DRAFT

*TREASURY LEGISLATION AMENDMENT (REPEAL
DAY) BILL 2015*

EXPLANATORY MATERIAL

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Glossary

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

Abbreviation	Definition
ABN	Australian Business Number
ABN Act	<i>A New Tax System (Australian Business Number) Act 1999</i>
ACN	Australian Company Number
AFSL	Australian financial services license
ASIC	Australian Securities & Investments Commission
Commissioner	Commissioner of Taxation
DA Act	<i>Development Allowance Authority Act 1992</i>
ICCT Act	<i>Infrastructure Certificate Cancellation Tax Act 1994</i>
ITAA 1936	<i>Income Tax Assessment Act 1997</i>
SGAA	<i>Superannuation Guarantee (Administration) Act 1992</i>
SSSA	<i>Small Superannuation Accounts Act 1995</i>
SUMLMA	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
TAA 1953	<i>Taxation Administration Act 1953</i>
TFN	Tax File Number
The Registrar	Registrar of the Australian Business Register

Chapter 1

Reducing the number of Business Identifiers

Outline of chapter

1.1 Schedule 1 to the Bill will amend the *Corporations Act 2001* (Corporations Act) and the *A New Tax System (Australian Business Number) Act 1999* (ABN Act) to provide for the Australian Business Number (ABN) to be the single numerical identifier for companies registered under the Corporations Act from 1 July 2016. The Schedule will also amend taxation laws from 1 July 2016 to allow an entity with an ABN to use it instead of a TFN.

Context of amendments

1.1 In the 2015-16 Budget, the Australian Government announced measures to make it easier to register a new business as part of the *Growing Jobs and Small Business* package. The package will encourage business start-ups and entrepreneurship by making it quicker and simpler to set up a new business. As part of the package, the Government is reducing the number of business identifiers.

1.2 Unique Commonwealth-issued numerical identifiers are important in facilitating business interactions with other businesses and with Government. However, the same business entity will often receive separate identifiers to use with different agencies and for different types of interactions. A business can receive an ABN from the Registrar of the Australian Business Register (the Registrar), a Tax File Number (TFN) from the Commissioner of Taxation (the Commissioner) and an Australian Company Number (ACN) from the Australian Securities and Investments Commission (ASIC).

1.3 Rationalising these to a single identifier for companies would simplify the system and make business administration easier and less confusing.

1.4 To reduce transition costs and uncertainty, changes will only be made prospectively.

Impact on ACNs

1.5 The current law provides that where an application is lodged for registration as a company, ASIC may give the company an ACN, register the company and issue a certificate that includes the company's name and ACN. The Corporations Act contains a number of provisions which refer to ACNs, for example:

- a company may adopt the ACN as its name;
- the company's ACN or ABN (if the last 9 digits are the same, and in the same order, as the last 9 digits of its ACN) must appear on certain documents and its common seal, if it has one.

1.6 From 1 July 2016, the process for applying for registration as a company under the Corporations Act and applying to be registered in the ABR under the ABN Act will be linked.

1.7 New companies will be issued with a single numerical identifier, an ABN, as part of their company registration process. A company will be registered for ABN purposes at the same time it is registered as a company under the Corporations Act.

1.8 ASIC will no longer give an ACN to a company on registration from this date. Accordingly, new companies will no longer be able to use the ACN as their name. However, a company registered on or after 1 July 2016 will be able to use the ABN in its name.

1.9 ASIC will only be able to register a company if:

- an application for registration in the ABR has been lodged in respect of the proposed company and the Registrar has allocated an ABN to the company; or
- (for an existing body), it already has an ABN.

1.10 There will not be any additional identification requirements for registering a company under the Corporations Act, but further identification requirements will apply as part of the application to be registered in the Australian Business Register (ABR).

1.11 When a company is registered by ASIC, it may be issued with a certificate which includes its ABN.

1.12 A company registered on or after 1 July 2016 will be required to display its ABN on certain documents and on its common seal (if it has one).

1.13 An existing company will retain all its current numerical identifiers. A company registered before 1 July 2016 will be able to continue to use its ACN under the Corporations Act and will not be required to apply for an ABN if it does not have one.

Impact on TFNs

1.1 The current law allows entities, including entities carrying on a business, to apply for a TFN. Sole traders use their individual TFN for their business. Other entities, including partnerships, companies and trusts, are issued with their own TFN. Although entities are not required to have a TFN, tax consequences apply to entities that do not quote their TFN in certain circumstances.

1.2 The amendments made by this Schedule ensure that an entity that has an ABN may use it as their only Commonwealth-issued numerical identifier. Such entities will not need a TFN, although they will not be precluded from obtaining one if they choose.

1.3 Entities with an ABN will be able to quote their ABN to avoid any tax consequences that may otherwise have arisen due to failure to quote a TFN.

Summary of new law

1.4 The Schedule amends the Corporations Act from 1 July 2016:

- to provide that ASIC will no longer give a company an ACN on registration;
- to provide that a company will only be able to be registered under the Corporations Act if it has been allocated an ABN by the Registrar of the ABR or, for an existing body, if it already has an ABN; and
- to make consequential amendments that flow from this.

1.5 The Schedule amends the ABN Act from 1 July 2016 to ensure that a company registered under the Corporations Act from 1 July 2016 is registered on the ABR.

1.6 The Schedule amends taxation laws from 1 July 2016 to allow an entity with an ABN to use it instead of a TFN.

Comparison of key features of new law and current law

Corporations Act

<i>New law</i>	<i>Current law</i>
A body that is to be taken to be registered under the Corporations Act in accordance with s 5H will be required to have been allocated with an ABN on the 'registration day', unless the body already has an ABN. The ABN will be able to be used in the company's name.	A company that is to be taken to be registered under the Act in accordance with s 5H may use the ACN in its name.
An application for registration as a company must state the company's proposed name unless the ABN is to be used in its name.	An application for registration as a company must state the company's proposed name unless the ACN is to be used in its name.
If an application is lodged for registration as a company, then ASIC may register the company if: - the company has been allocated an ABN by the Registrar of the ABR and the Registrar has given ASIC written notice of the ABN; or - the body already has an ABN. ASIC may issue a certificate that includes the company's ABN.	If an application is lodged for registration as a company, then ASIC may give the company an ACN, register the company and issue a certificate that includes the company's ACN.
An application for registration of a company lodged online must contain an email address for the proposed company if lodged on or after 1 July 2016.	No equivalent provision.
Where a company registered on or after 1 July 2016 has a common seal, the company must set out on it its name and ABN or, if the company has its ABN in its name, its name.	If a company has a common seal, the company must set out on it its name and ACN (or ABN if the last 9 digits are the same) or, if the company has its ACN in its name, its name.
A company registered on or after 1 July 2016 may have as its name an available name or the expression	A company may have as its name an available name or the expression 'Australian Company Number'

‘Australian Business Number’ followed by the company’s ABN. A company registered before 1 July 2016 will not be able to change its name to its ACN on or after 1 July 2016.	followed by the company’s ACN.
A company must set out its name on all its public documents and negotiable instruments. Subject to specified exceptions, if a company is registered on or after 1 July 2016, then the company’s ABN must also be set out, unless the ABN is used in its name.	A company must set out its name on all its public documents and negotiable instruments. Subject to specified exceptions, it must also set out its ACN (or ABN if the last 9 digits are the same) unless the ACN is used in its name.
A company registered on or after 1 July 2016 does not have to set out the expression “Australian Business Number” followed by its ABN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.	A company does not have to set out the expression “Australian Company Number” followed by its ACN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.
If a company registered on or after 1 July 2016 does not comply with a direction under s 158(2), ASIC may change the company’s name to its ABN and any other words that s 148 requires.	If a company does not comply with a direction under s 158(2), ASIC may change the company’s name to its ACN and any other words that s 148 requires.
If the Registrar of the ABR notifies ASIC that the company’s ABN has been changed, ASIC must give the company a new certificate of registration if the company was registered on or after 1 July 2016.	No equivalent provision.
A document that is required to be lodged with ASIC under sections 5H, 117 and 601BC must be lodged in the manner that ASIC requires, which may include electronically.	A document may be lodged with ASIC electronically only if ASIC and the relevant person have agreed that it may be lodged electronically or if ASIC has approved the electronic lodgment of documents of that kind.
ASIC must give notice of a deregistration of a company to the Registrar of the ABR	No equivalent provision.
ASIC must give notice of a reinstatement of a company registration to the Registrar of the ABR	No equivalent provision.

If an ACN is required or permitted to be used under a Commonwealth law administered by ASIC, the ABN may be used if the company was registered on or after 1 July 2016.	Despite any provision in an Act, where the ACN of a company is required or permitted to be used under a law of the Commonwealth administered by ASIC, the ABN of the company may be used instead if the last 9 digits of the ABN are the same, and in the same order, as the last 9 digits of the ACN.
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A New Tax System (Australian Business Number) Act 1999

<i>New law</i>	<i>Current law</i>
A person may apply to the Registrar for an ABN on behalf of a company that will be registered under the Corporations Act. The ABN Act applies in relation to the application as if the company were registered under the Corporations Act. The company's ABN will be allocated for the purposes of registration under the Corporations Act, and its registration on the ABR will take effect from its date of registration under the Corporations Act. The Registrar must not register the company on the ABR until the company actually is registered under the Corporations Act.	A company registered under the Corporations Act is entitled to an ABN. It would be registered on the ABR where it met the requirements of the ABN Act (entitlement, application and identity verification).
The Registrar may not cancel the registration of a company in the ABR while that company is registered under the Corporations Act. Where the Registrar cancels the registration of a Corporations Act company because the company was deregistered under the Corporations Act, and the company's Corporations Act registration has been reinstated, the Registrar must reinstate the registration of the company on the ABR. For entities other than Corporations Act companies, the current law will continue to apply.	The Registrar may cancel an entity's registration in the ABR if satisfied that: • it is registered under an identity that is not its true identity; or • at the time it was registered, it was not entitled to an ABN; or • it is no longer entitled to have an ABN. The Registrar must reinstate the entity's registration if the Registrar is satisfied that the registration should not have been cancelled.

Tax Administration Act 1953

<i>New law</i>	<i>Current law</i>
A payer is required to withhold money from certain payments where the payee did not quote their TFN or ABN.	A payer is required to withhold money from certain payments where the payee did not quote their TFN or, in some cases, their ABN.
Trustee beneficiary non-disclosure tax is imposed on trustees of certain closely held trusts that do not make a correct TB statement. A correct TB statement must include the TFN or ABN of the relevant trustee beneficiary.	Trustee beneficiary non-disclosure tax is imposed on trustees of certain closely held trusts that do not make a correct TB statement. A correct TB statement must include the TFN of the relevant trustee beneficiary.

Detailed explanation of new law

1.1 From 1 July 2016, companies and other entities carrying on a business will be able to use ABNs as their only numeric identifier for all Commonwealth purposes. ABNs are numeric identifiers allocated by the Registrar of the ABR. An entity receives an ABN as part of the process of registration on the ABR.

1.2 Allowing companies and other entities carrying on a business to use one numeric identifier will simplify their interactions with the Commonwealth – previously, they may have needed to use their ABN, TFN or ACN for different purposes.

1.3 For companies, this Schedule amends the Corporations Act to ensure that they may use their ABN instead of their ACN. Companies registered under the Corporations Act on or after 1 July 2016 will be issued with an ABN instead of an ACN. They will also be registered on the ABR.

1.4 This Schedule also amends the taxation laws to ensure that any entity with an ABN will be able to use that ABN, instead of a TFN, as its only tax identifier.

Changes to company registration and ACNs

1.5 ASIC registers a company under the Corporations Act where a person has lodged an application setting out the information required under the Corporations Act. Before 1 July 2016, ASIC issued an ACN to companies on registration.

Registration of a new Company

1.6 The schedule makes a number of changes to the registration rules for new companies.

1.7 From 1 July 2016, ASIC will no longer issue an ACN to a company on registration. The company's ABN will be used instead. *[Schedule 1, item 23, paragraph 118(1)(a) of the Corporations Act]*

1.8 The Schedule amends the definition of 'ACN' to reflect that it is the numerical identifier provided by ASIC to companies registered before 1 July 2016 *[Schedule 1, item 10, section 9 of the Corporations Act]*

1.9 Applications to register a company must state the address of the company's proposed registered office. This Schedule updates this requirement to include e-mail addresses where a company lodges an application electronically, on or after 1 July 2016 *[Schedule 1, items 17 and 18, paragraph 117(2)(j) of the Corporations Act]*

1.10 The Schedule:

- provides that an application to register a company does not need to state the company's proposed name if the ABN is to be used in its name *[Schedule 1, item 16, paragraph 117(2)(b) of the Corporations Act]*;
- provides that when the company is registered by ASIC, it may be issued with a certificate which includes its ABN *[Schedule 1, item 24, subparagraph 118(1)(c)(ii) of the Corporations Act]*; and
- enables a company registered on or after 1 July 2016 to use the ABN as its name *[Schedule 1, items 26 and 27, subsection 148(1) and paragraph 148(1)(b) of the Corporations Act]*.

1.11 ASIC will not register a company that has applied for registration under the Corporations Act until it has been allocated an ABN under the ABN Act. *[Schedule 1, items 20, 21 and 22, section 118 and subsections 118(1A) and 118(1) of the Corporations Act]*

1.12 ABNs are allocated by the Registrar under the ABN Act. To be allocated an ABN, a person may apply, on behalf of a company or body that is yet to be registered under the Corporations Act, to the Registrar for the company to be registered in the ABR. The ABN Act applies in relation to the application as if the company were registered under the Corporations Act and the application had been made by the company under subsection 9(1) of the ABN Act. Once the company has met the requirements for registration on the ABR, as set out in section 10 of the

ABN Act, the Registrar must allocate the company an ABN. *[Schedule 1, items 1 and 2, section 9B and subsection 10(1) of the ABN Act]*

1.13 The allocation of the ABN will not, by itself, be sufficient to register the company. The Registrar must not enter the company's name, the company's ABN, and the date of effect of registration into the Register before the company is registered under the Corporations Act. This is to prevent a company being registered on the ABR before it is registered under the Corporations Act. Registration on the ABR will take effect from the date on which the company is registered under the Corporations Act. *[Schedule 1, item 1, section 9B of the ABN Act]*

Bodies Corporate Registered as Companies

1.14 The schedule makes a number of changes to the registration rules for bodies corporate registered as companies.

1.15 An application by a body corporate to register as a company must include the proposed name under which the body is to be registered unless the ABN is to be used *[Schedule 1, item 40, paragraph 601BC(2)(d) of the Corporations Act]*.

1.16 An application lodged electronically on or after 1 July 2016 must also include the company's email address *[Schedule 1, item 41 and 42, paragraph 601BC(2)(ka) of the Corporations Act]*.

1.17 From 1 July 2016, ASIC will no longer issue an ACN to a company on registration. Unless the body already has an ABN, it will be required to have been allocated an ABN by the Registrar on the registration day. The body will also be registered on the ABR once it is registered under the Corporations Act. *[Schedule 1, items 1, 2, 44, 45, 46 and 47, section 9B and subsection 10(1) of the ABN Act and section 601BD of the Corporations Act]*

1.18 Upon registration, ASIC will issue a certificate to the body which will include, amongst other details, the company's ABN *[Schedule 1, item 48, subparagraph 601BD(1)(c)(ii) of the Corporations Act]*.

1.19 A body may have a name on registration that is its ABN followed by the company's ABN *[Schedule 1, item 49, paragraph 601BF(b) of the Corporations Act]*.

Registration of Body as a Company on Basis of State or Territory Law

1.20 A body is taken to be registered as a company under the Corporations Act if it is deemed to be a registered company under the law of a State or Territory.

1.21 From 1 July 2016, ASIC will no longer issue an ACN to a company on registration. Unless the body already has an ABN, it will be required to have been allocated an ABN by the Registrar on the registration day. The body will also be registered on the ABR once it is registered under the Corporations Act. *[Schedule 1, items 1, 2, 7 and 9, section 9B and subsection 10(1) of the ABN Act and section 5H of the Corporations Act]*

1.22 The State or Territory law which provides that a body is a deemed registration company must specify, among other things, the company's proposed name unless the ABN is to be used in its name. *[Schedule 1, item 6, subparagraph 5H(1)(b)(iii) of the Corporations Act]*

Names

1.23 The Corporations Act sets out a number of requirements regarding the use of the ACN in a company's name and on certain documents. As a result of ASIC no longer issuing ACNs to companies registered on or after 1 July 2016, the ABN will fulfil the role of numeric identifier for the purposes of the Act for these companies. Therefore requirements relating to the use of the ACN are replicated for the ABN for companies registered on or after 1 July 2016.

1.24 This Schedule:

- requires a company registered on or after 1 July 2016 to display its ABN on certain documents and on its common seal (if it has one) unless the ABN is used as its name *[Schedule 1, items 25, 26, 27, 29 and 53, paragraph 123(1)(c), paragraph 148(1)(c), section 153 of the Corporations Act and Schedule 3 to the Corporations Act];*
- provides that a company registered on or after 1 July 2016 does not have to set out its ABN on certain receipts *[Schedule 1, item 29, section 154 of the Corporations Act];*
- clarifies that a company registered before 1 July 2016 will be able to continue to use its ACN as its name and will not be required to apply for an ABN if it does not have one. *[Schedule 1, item 27, paragraph 148(1)(b) of the Corporations Act].* However, a company with an ACN that does not use the ACN in its name, will not be able to change its name to its ACN after 1 July 2016 *[Schedule 1, item 28, subsection 148(1A) of the Corporations Act];*
- allows for regulations to be made to exempt a company or a class of companies from the requirement to display an ABN on certain documents *[Schedule 1, item 30, section 155 of the Corporations Act];* and

- provides for ASIC to change the name of a company registered on or after 1 July 2016 to its ABN in certain circumstances [*Schedule 1, item 31, subsection 158(3) of the Corporations Act.*]

When a company's ABN is changed

1.25 The Registrar must notify ASIC if the Registrar changes the ABN of a company registered under the Corporations Act. If the Registrar of the ABR notifies ASIC that it has changed a company's ABN then ASIC must issue a new certificate of registration to that company if the company was registered on or after 1 July 2016. [*Schedule 1, items 3 and 32, subsection 17(4) of the ABN Act and section 161B of the Corporations Act*]

Lodgement of documents with ASIC

1.26 Consistent with the aims of the package to make it simpler and quicker to set up a business, ASIC will be able to approve the manner of lodgement of documents required to be lodged under sections 5H, 117 and 601BC of the Corporations Act. The manner may include electronic lodgement and reflects the practice of other ASIC registers such as the national Business Names Register [*Schedule 1, item 36, subsection 353A(1) of the Corporations Act*]. A requirement to lodge electronically may include authentication requirements [*Schedule 1, items 34 and 36, section 351(4) and subsection 353A(2) of the Corporations Act*].

1.27 The specific provisions concerning electronic lodgement of documents set out in section 352 will still apply to documents lodged under provisions other than sections 5H, 117 and 601BC. [*Schedule 1, item 35, subsection 352 of the Corporations Act*].

1.28 To reflect these changes a number of consequential amendments are made to provisions in the Act. [*Schedule 1, items 8, 19, 33, 43 and 51, section 5H(2) note, section 117(2) note 5, paragraph 283BF(1)(b), subsection 601BC(2) note 3 and subsection 718(1)(note 3) of the Corporations Act*]

Deregistration and reinstatement of a company

1.29 The Registrar will not be able to cancel the ABN of a Corporations Act company. This reflects the importance of the ABN, as it is the single numerical identifier for a company. The cancellation of an ABN for a Corporations Act company can only occur through deregistration. When a company is deregistered by ASIC, notice will be given to the Registrar of the ABR [*Schedule 1, items 4 and 37, subsection 18(7) of the ABN Act and section 601ACA of the Corporations Act*].

1.30 If a company wants to cancel its ABN, it will need to be deregistered by ASIC first.

1.31 Where a company's registration is reinstated by ASIC through section 601AH, notice will be given by ASIC to the Registrar of the ABR. The Registrar must then reinstate the registration of that company on the ABR. *[Schedule 1, items 5, 38 and 39, subsection 19(1A) of the ABN Act and subsections 601AH(4A) and 601AL(2) of the Corporations Act]*

Use of ABN

1.32 If an ACN is required or permitted to be used under a Commonwealth law administered by ASIC, the ABN may be used if the company was registered on or after 1 July 2016 and has not been issued with an ACN. A company registered before 1 July 2016 can continue to use its ABN instead of its ACN (provided the digits are the same and in the same order) in any case where the ACN is required or permitted to be used under a Commonwealth law administered by ASIC. *[Schedule 1, item 52, section 1344 of the Corporations Act]*

Other consequential amendments to the Corporations Act

1.33 The reference to 'ACN' in paragraphs 601CB(h) and 601CE(j) (which relate to the registration of registrable Australian bodies and foreign companies) will only be relevant to companies registered before 1 July 2016. Accordingly, 'if applicable' has been inserted after 'ACN' in these provisions to clarify that it will not be relevant to all companies. *[Schedule 1, item 50, paragraphs 601CB(h) and 601CE(j) of the Corporations Act]*

Small business guide

1.34 The small business guide in Part 1.5 of the Corporations Act summarises the main rules in the Act that apply to proprietary companies limited by shares – the most common type of company used by small business.

1.35 The Schedule amends the guide to reflect the amendments described above concerning the use and display of the ABN for companies registered on or after 1 July 2016. *[Schedule 1, items 11 to 15, Part 1.5 of the Corporations Act]*

Changes to taxation laws

1.36 Entities entitled to an ABN will not be prevented from applying for a TFN if they choose to do so. However, the amendments made by this Schedule seek to ensure that there is no need for them to do so, because they will not be disadvantaged for not having a tax file number.

PAYG Withholding

1.37 Other than their administrative use as identifiers, TFNs and ABNs have a legislative role in relation to certain kinds of Pay As You Go (PAYG) withholding. PAYG withholding refers to amounts that are withheld from particular kinds of payments or transactions, often as a rough estimate of the tax liability that may arise from that payment or transaction.

1.38 Payers are required to withhold amounts from certain payments where the recipient did not quote their TFN or, in some cases, their ABN. From 1 July 2016, recipients will be able to quote their ABN instead of their TFN to avoid withholding. The amendments are discussed in detail below.

1.39 Sections 12-140 to 12-170 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) require payers to withhold amounts from certain amounts relating to certain investments if the recipient did not quote their TFN, or in some cases their ABN, to the investment body by a certain time. These investments are 'Part VA investments', which are listed in s 202D of the *Income Tax Assessment Act 1936* (ITAA 1936). This Schedule amends these provisions to provide that an entity can quote their ABN instead of the TFN to prevent withholding under these provisions. *[Schedule 1, items 63 to 68, sections 12-140, 12-145, 12-150 and 12-155 of Schedule 1 to the TAA 1953]*

1.40 Sections 12-175 to 12-185 of Schedule 1 to the TAA 1953 require amounts to be withheld from certain amounts relating to income of a closely held trust if the beneficiary did not quote their TFN to the trustee before a certain time. This Schedule amends these provisions to provide that an entity can quote their ABN instead of the TFN to prevent withholding under these provisions. *[Schedule 1, items 69 and 70, sections 12-175 and 12-180 of Schedule 1 to the TAA 1953]*

Trustee beneficiary statements

1.41 Trustee beneficiary non-disclosure tax is imposed on trustees of certain closely held trusts that do not make a correct TB statement. In particular, the trustee has to pay tax on the untaxed part of a share of the net income of the trust at the highest marginal rate if:

- a share of the net income of the closely held trust is included in the assessable income of a trustee beneficiary (a beneficiary acting in the capacity of a trustee of another trust) under s 97 of the ITAA 1936; and
- that share comprises or includes an untaxed part; and

- the trustee is not covered by a determination under s 102UK(1A) of the ITAA 1936 exempting the trustee from making a correct TB statement; and
- the trustee does not make and give to the Commissioner a correct TB statement (s 102UK of the ITAA 1936).

1.42 A correct TB statement is a statement, made in the approved form, containing identity information about the trustee beneficiary and the relevant amount of the untaxed part (s 102UG of the ITAA 1936). This allows the Commissioner to trace untaxed amounts of income through chains of trusts. Where the trustee beneficiary is a resident, a correct TB statement must include the trustee beneficiary's tax file number.

1.43 From 1 July 2016, a correct TB statement may include either the TFN or the ABN of the trustee beneficiary. *[Schedule 1, item 56, paragraph 102UG(3)(a) of the ITAA 1936]*

Consequential amendments

1.44 This Schedule makes consequential amendments to the taxation laws to:

- ensure that the provisions relating to annual reports and payment summaries of amounts withheld under PAYG withholding reflect the changes to the withholding rules *[Schedule 1, items 75 and 76, subsections 16-152 and 16-170(1) of Schedule 1 to the TAA 1953];*
- ensure that the provisions relating to refunds of erroneously withheld amounts reflect the changes to the withholding rules *[Schedule 1, items 77 to 82, subsections 18-65(2) and 18-70(2) of Schedule 1 to the TAA 1953];* and
- update references to amended provisions to aid useability and readability of the law, including inserting a definition of 'tax identifier' that includes TFNs and ABNs. *[Schedule 1, items 57, 59 to 62 and 70 to 74, subsections 10-5(1), 12-5(2), 12-190(5) and 15-15(1) of Schedule 1 to the TAA 1953 and subsection 995-1 of the Income Tax Assessment Act 1997].*

1.45 This Schedule makes consequential amendments to various Commonwealth laws to allow a company to use its ABN instead of an ACN. *[Schedule 1, items 54, 55 and 58, paragraphs 23DZR(1)(a) and 23DZZQ(1)(a) of the Health Insurance Act 1973 and subsection 286A(9) of the Offshore Petroleum and Greenhouse Gas Storage Act 2006]*

Application and transitional provisions

1.46 The amendments in this Chapter will commence on 1 July 2016.

Chapter 2

Lost and unclaimed superannuation reforms

Outline of chapter

2.1 Schedule 2 to this Bill amends the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMMLA), and other superannuation laws to enable the Commissioner of Taxation (Commissioner) to pay certain superannuation amounts directly to individuals with a terminal medical condition and to remove the requirement for superannuation funds to lodge a separate biannual lost members statement with the Commissioner.

Context of amendments

2.2 In the 2015-16 Budget the Government announced a package of measures to reduce red tape for superannuation funds and members by removing redundant reporting obligations and by streamlining lost and unclaimed superannuation administrative arrangements.

2.3 There are legislative impediments to the Commissioner directly paying some lost member balances and other superannuation amounts to individuals with a terminal medical condition. In many circumstances these amounts must first be transferred to an account with a complying superannuation plan before being paid to the individual. This creates unnecessary red tape and delays for those needing immediate access to their superannuation benefits.

2.4 Superannuation funds are required to lodge a biannual lost members statement with the Commissioner, identifying all superannuation balances of lost members. This statement provides information to the Commissioner to display on a register of lost members. The Commissioner also collects some lost member information through the annual member information statement. Removing the requirement for superannuation funds to lodge a lost members statement, on a twice yearly basis, with the Commissioner will remove a duplicated reporting burden for funds, significantly reducing compliance costs.

Summary of new law

2.5 Part 1 of Schedule 2 amends the SUMLMA, the *Small Superannuation Accounts Act 1995* (SSSA) and the *Superannuation Guarantee (Administration) Act 1992* (SGAA) to enable the Commissioner to pay unclaimed money of lost members and other superannuation amounts directly to persons with a terminal medical condition. Part 2 of Schedule 2 amends the SUMLMA to remove the requirement for superannuation providers to lodge, twice yearly, a lost members statement with the Commissioner. Information for the purposes of the register of lost members will be collected using the Commissioner's existing administrative powers under the *Taxation Administration Act 1953* (TAA). Part 3 of Schedule 2 amends the SUMLMA to enable the meaning of a lost member to be placed in regulation.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The Commissioner can pay amounts under the SUMLMA, SSAA and SGAA directly to persons with a terminal medical condition.	The Commissioner cannot always pay amounts under the SUMLMA, SSAA and SGAA directly to persons with a terminal medical condition.
Superannuation providers will not be required to provide the Commissioner with a lost members statement on a twice yearly basis.	Superannuation providers must give the Commissioner a lost members statement on a twice yearly basis.

Detailed explanation of new law

Terminal medical condition

2.6 Amounts in the superannuation system are generally able to be released, tax-free, to persons with a terminal medical condition.

2.7 The SUMLMA requires superannuation providers to report and transfer unclaimed money to the Commissioner on a twice yearly basis. Individuals are able to claim back unclaimed superannuation amounts from the Commissioner at any time with interest. These unclaimed money amounts include certain lost member accounts, being small lost accounts and inactive accounts of unidentifiable members.

2.8 Part 4A of the SUMLMA only permits the Commissioner to pay claimed lost member accounts directly to a person, if the person has

reached a certain 'eligibility' age; or the amount is less than \$200; and the person has not died. In other circumstances, including where a person has a terminal medical condition, the claimed amount must be first transferred into an account with a complying superannuation plan, before being released from the superannuation system. This creates unnecessary delays and paperwork for terminally ill persons wishing to access their superannuation benefits.

2.9 Similarly, the Commissioner also administers small accounts under the SSAA and shortfall superannuation guarantee amounts under the SGAA. Section 65 of the SSAA enables direct withdrawal of account balances in certain circumstances, including on retirement on the ground of disability. Similarly, section 66 of the SGAA requires the Commissioner to pay an amount of shortfall component directly to a former employee that has retired due to permanent incapacity or invalidity. Accounts under the SSAA and shortfall amounts under the SGAA can also be transferred to a complying superannuation plan. However, there is no specific provision in either the SSAA or the SGAA to enable the Commissioner to pay these amounts directly to a person with a terminal medical condition.

2.10 Part 1 of Schedule 2 will amend the SUMLMA to enable the Commissioner to pay amounts held in respect of lost member accounts directly to individuals with a terminal medical condition. The Commissioner will also be required to make direct payments of account balances under the SSAA and shortfall amounts under the SGAA, on request, to individuals with a terminal medical condition.

2.11 A terminal medical condition exists in relation to an individual if two registered medical practitioners, at least one of whom is a specialist; have certified that a person suffers from an illness or injury that is likely to result in their death within the certification period of 24 months or less. A payment of an amount, under the SSAA or SGAA, or a lost member amount under subsection 24G(2) of the SUMLMA, by the Commissioner to a person with a terminal medical condition will be a superannuation benefit. These types of superannuation benefits under the *Income Tax Assessment Act 1997* are tax-free in the hands of the individual concerned.

Lost member account reporting

2.12 Part 4 of the SUMLMA requires the Commissioner to keep a register of lost members containing information for the purpose of reuniting individuals with their lost superannuation money. Superannuation providers must give the Commissioner a twice yearly statement containing information relating to lost members for the purpose

of the register. These requirements are in addition to the biannual reporting and payment requirements for certain unclaimed lost member accounts in Part 4A of the SUMLMA.

2.13 Superannuation providers are also required to give the Commissioner a member information statement, in the approved form under section 390-5 of Schedule 1 to the TAA. Subsections 390-5(5) and 390-5(6) of Schedule 1 of the TAA enable the Commissioner to specify, by legislative instrument, the period covered by the statement and the day on which the statement must be given to the Commissioner. Currently, a member information statement is required for each individual who held a superannuation interest in a superannuation plan for a financial year and is due on 31 October each year.

2.14 The proposed amendments will repeal requirements under Part 4 of the SUMLMA for the provision of information about lost superannuation members to the Commissioner for the purposes of the register of lost members. The Commissioner will continue to be required to keep a register of lost members under Part 4 of the SUMLMA and will be permitted to give information contained in the register to State and Territory authorities. Information for the purposes of the register of lost members will be collected using the Commissioner's existing administrative powers under the TAA.

2.15 The amendments will also repeal the meaning of a lost member in Part 4 of the SUMLMA, and incorporate this meaning within the definition of lost member in section 8 of the SUMLMA. A lost member continues to be a lost RSA holder within the meaning of the *Retirement Savings Accounts Regulations 1997* (RSA regulations) or a lost member within the meaning of the *Superannuation Industry (Supervision) Regulations 1994* (SIS regulations).

2.16 Part 3 of Schedule 2 will repeal the meaning of a lost member in section 8 of the SUMLMA, so it refers to a meaning in the regulations. This schedule will not commence until a day fixed by proclamation. However, if Part 3 of Schedule 2 does not commence within six months from the day this Bill receives Royal Assent, then the meaning of a lost member will remain within the definition of a lost member in the SUMLMA.

2.17 It is intended that regulations will be made to place the meaning of a lost member in the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* (SUMLM regulations) following Royal Assent of the Bill. The proclamation provision will enable a definition of a lost member to be maintained on a continuous basis for the purposes of the SUMLMA.

2.18 Consequential amendments to the SUMLM regulations will be made to repeal regulations made for the purposes of Part 4 of the SUMLMA.

Application and transitional provisions

2.19 The amendments in Part 1 of Schedule 2 will commence on 1 July 2016.

2.20 The amendments in Part 2 of Schedule 2 will commence on 1 July 2016. The amendments in Part 2 of Schedule 2 will not apply to information in relation to lost members that must be given to the Commissioner for a half year ending before 1 July 2016.

2.21 Information for the purposes of the register of lost members will be collected by the Commissioner through a lost members statement given under Part 4 of the SUMLMA for the half year ending on 30 June 2016. This information must generally be given to the Commissioner on or before 31 October 2016, in accordance with the SUMLM regulations. For subsequent reporting periods, commencing from the 2016-17 financial year, information will be collected through the annual member information statement given under section 390-5 of the TAA.

2.22 The amendments in Part 3 of Schedule 2 will commence on a day to be fixed by proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day the Act receives Royal Assent they do not commence at all.

2.23 Transitional provisions will ensure that any information, collected under Part 4 of the SUMLMA, for a half year ending before 1 July 2016, can continue to be included in the register of lost members.

Chapter 3

Modify ‘in receivership’ rules

3.1 Schedule 3 to the Bill contains amendments to the *Corporations Act 2001* to modify the notification and reporting obligations applying to certain corporations that have property in receivership or property in respect of which a controller is acting.

3.2 Responsible entities of managed investment schemes, licensed trustee companies or custodians will now:

- notify of the appointment of a receiver only on the public documents and negotiable instruments relating to the registered scheme or trust that is in receivership (rather than all public documents and negotiable instruments of the corporation); and
- report to the controller only on the affairs of the registered scheme or trust in respect of which the controller is acting (rather than all the affairs of the corporation).

Context of amendments

Notification obligations

3.3 Generally, when a receiver is appointed to property of a corporation, that corporation must notify of the receivership on all its public documents and negotiable instruments (notification obligation). The same obligation to notify applies when a controller is acting in relation to property of a corporation.

3.4 The notification obligations impose unnecessary compliance costs and may cause investor confusion and damage business reputations for certain corporations that are in the business of holding property on trust. These corporations are:

- responsible entities of registered schemes holding scheme property;
- licensed trustee companies that hold property on trust; and

- corporations holding an Australian financial services license (AFSL) authorising the provision of custodial and depository services that hold property on trust ('licensed custodians').

3.5 As these corporations hold property on trust (including bare trusts), liability from receivership is confined to the assets of the particular registered scheme or trust, rather than all assets of the corporation. It is therefore appropriate that the notification obligation be confined to the registered scheme or trust containing the assets under receivership (or assets in respect of which the controller is acting).

3.6 Restricting the notification obligations to the public documents and negotiable instruments relating to the affected registered scheme or trust will reduce unnecessary compliance costs whilst ensuring persons dealing with the corporation are informed of the receivership as required. The modified notification obligation will also reduce investor confusion as only documents and instruments relating to the affected scheme or trust will contain notification of the receivership or that a controller is acting.

3.7 These amendments also specifically address the situation where the scheme property is held by a corporation other than the responsible entity, which is common business practice. The Schedule requires the responsible entity of the registered scheme that has property in receivership to notify of the receivership on all its public documents and negotiable instruments that relate to the registered scheme. This is to ensure that persons dealing with the responsible entity are informed of the receivership.

3.8 The policy intent is not to modify notification obligations for corporations generally. While there may be other corporations that hold property on trust, it would be less likely that such corporations would have their other business operations unaffected by the receivership of trust assets. The other policy reason for not extending the modified notification obligations to corporations generally is to safeguard against the risk that a corporation will claim that the relevant assets held under receivership are merely held in trust when this is not the case to avoid having to notify of the receivership on all their public documents or negotiable instruments.

Reporting obligations

3.9 Where a controller is acting in relation to property of a corporation, that corporation's 'reporting officers' must report to the controller on all the affairs of the corporation (reporting obligation) in the prescribed form.

3.10 The purpose of the reporting obligation is to ensure that a controller receives required information on the affairs of the corporation. However, the reporting obligation results in unnecessary compliance costs, without resulting in additional meaningful information to the controller in the case of:

- responsible entities of registered schemes;
- licensed trustee companies; and
- licensed custodians.

3.11 This is because these corporations, in the absence of the changes made by this Schedule, would be required to report to the controller in respect of all their affairs, including in respect of registered schemes and trusts, or the corporation's own affairs, notwithstanding the affairs are not related to the assets to which the controller was appointed.

3.12 Restricting the reporting obligation for such corporations to affairs relating to the particular registered scheme or trust containing the property to which the controller has been appointed addresses this problem whilst ensuring the necessary information flows to the controller.

3.13 A separate problem arises in the case where scheme property is held by a corporation other than the responsible entity of the registered scheme (which is common). The obligation to report to the controller falls on the corporation holding the scheme property (the custodian) rather than the responsible entity, even though the latter has better access to the information sought by the controller. The corporation holding the scheme property generally needs to obtain information from the responsible entity to comply with their reporting obligation, and this increases their compliance costs. These amendments provide that where a licensed custodian holds scheme property, the obligation to report to a controller on the affairs of the particular registered scheme falls solely on the responsible entity.

Summary of new law

3.14 The Schedule amends the Act:

- in the case where scheme property of a responsible entity of a registered scheme, or property held on trust by a licensed trustee company or licensed custodian is in receivership, to require the corporation to notify of the receivership only on the public documents and negotiable instrument related to the particular registered scheme or trust;
- in the case where a controller is acting in relation to scheme property of a registered scheme, or property held on trust by a licensed trustee company or a licensed custodian, to require the corporation's reporting officers to report to the controller only on the affairs of the particular registered scheme or trust; and
- in the case where a controller is appointed to scheme property of a registered scheme held by a licensed custodian, to require the controller to only serve a notice on the responsible entity of the registered scheme and require a director or secretary of the responsible entity to report to the controller on the affairs of the scheme.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Where a receiver has been appointed to: scheme property of a registered scheme of a responsible entity; or property held on trust by a licensed trustee company or corporation that holds an AFSL authorising the provision of custodial or depository services, that the corporation must set out a statement that a receiver has been appointed only on the public documents or negotiable instruments of the corporation that relate to the registered scheme or trust containing the property in receivership.	Where a receiver has been appointed to property of a corporation, the corporation must set out a statement that a receiver has been appointed on every public document or negotiable instrument of the corporation.
Where there is a controller acting in relation to: scheme property of a registered scheme of a responsible entity; or property held in trust by a	Where there is a controller acting in relation to property of a corporation, the corporation must set out a statement that a controller is acting on

licensed trustee company or a corporation that holds an AFSL authorising the provision of custodial or depository services, that corporation must set out a statement that a controller is acting only on the public documents or negotiable instruments relating to the particular registered scheme or trust containing the property in respect of which the controller is acting.	every public document or negotiable instrument of the corporation.
Where a receiver has been appointed to scheme property of a registered scheme that is not property of the responsible entity of the registered scheme, the responsible entity must set out a statement that a receiver has been appointed on all public documents and negotiable instruments relating to the registered scheme.	No equivalent.
Where a controller is acting in relation to scheme property of a registered scheme that is not property of the responsible entity of the registered scheme, the responsible entity must set out a statement that a controller is acting on all public documents and negotiable instruments relating to the registered scheme.	No equivalent.
The reporting officers: of the responsible entity of a registered scheme, licensed trustee company or corporation that holds an AFSL authorising the provision of custodial or depository services that has scheme property or trust property in respect of which a controller is acting must report to the controller only on the affairs of the particular registered scheme or trust.	The reporting officers of a corporation that has property in respect of which a controller has been appointed must report to the controller on all the affairs of the corporation.
When a person becomes a controller of scheme property of a registered scheme that is not property of the responsible entity of the scheme and is property held on trust by a licensed custodian, the controller must serve a notice, as soon as practicable, on the responsible entity (not the licensed	When a person becomes controller of scheme property of a registered scheme that is held by a licensed custodian, the controller must serve a notice on the licensed custodian and, within 14 days (or any additional period allowed), a director or secretary of the licensed custodian

custodian) and, within 14 days (or any additional period allowed), a director or secretary of the responsible entity must report to the controller on the affairs of the scheme.	must report to the controller on all its affairs.
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Detailed explanation of new law

Modified notification obligations

3.15 The Schedule modifies the notification obligations for the following corporations:

- a responsible entity of a registered scheme where scheme property is in receivership or a controller is acting in relation to such property;
- a licensed trustee company, where property held on trust is in receivership or a controller is acting in relation to such property; and
- a corporation holding an Australian financial services licence (AFSL) that authorises the provision of custodial or depository services, where property held on trust is in receivership or a controller is acting in relation to such property.

3.16 These corporations must include a statement that a receiver (or receiver and manager) has been appointed or a controller is acting only on the public documents and negotiable instruments relating to the particular registered scheme or trust under receivership or in respect of which the controller is acting. *[Schedule 3 item 6, subsection 428(2A)]*

3.17 The corporation may specify, in the public document or negotiable instrument, the relevant affected scheme or trust to provide further clarity regarding the assets in respect of which the receiver (or receiver and manager) or controller has been appointed. *[Schedule 3, item 6, subsection 428(2A)]*

3.18 The modified notification obligations apply only to a licensed custodian; that is, a corporation holding an AFSL authorising the provision of custodial or depository services, including where the licensed custodian holds the property on bare trust (where the beneficiary is absolutely entitled to the trust property and can call for immediate payment).

3.19 While the property must be held by a corporation that holds an AFSL authorising the provision of custodial or depository services, it is not necessary that the property be held *in connection* with the provision of custodial or depository services. This is to ensure that the modified notification obligation applies to licensed custodians holding scheme property of a registered scheme. As paragraph 766E(3)(b) provides that ‘holding the assets of a registered scheme’ does not constitute providing a custodial or depository service, not requiring the property to be held in connection with the provision of custodial and depository services ensures that a licensed custodian holding scheme property of a registered scheme under receivership will only need to notify of the receivership on public documents and negotiable instruments relating to the scheme, which is the policy intent.

Scheme property not held by a responsible entity

3.20 Where a receiver is appointed to scheme property of a registered scheme that is not property of the responsible entity of the registered scheme, the responsible entity of the registered scheme must notify of the receivership on every public document or negotiable instrument that relates to the registered scheme. *[Schedule 3, item 6, subsection 428(2B)]*.

3.21 It is common business practice for scheme property of a registered scheme to be held by a person other than the responsible entity of the scheme. Typically, the scheme property is held by a custodian agent (or sub-custodian) of the responsible entity on trust for the responsible entity who holds the beneficial interest on trust for the members of the registered scheme.

3.22 In the absence of this provision, the responsible entity would not have been required to notify of the receivership on its public documents and negotiable instruments and persons dealing solely with the responsible entity would not have been informed of the receivership. Requiring the responsible entity to notify of the receivership ensures that persons that only have dealings with the responsible entity in relation to scheme property under receivership will be informed of the receivership.

3.23 For the same reason, where a controller is acting in relation to scheme property that is not held by the responsible entity of the registered scheme, the responsible entity must now notify that a controller is acting on all public documents and negotiable instruments relating to the particular registered scheme. *[Schedule 3, item 6, subsection 428(2C)]*

3.24 The notification obligations imposed on the responsible entity are in addition to the notification obligations applying to the corporation holding the property. For example, if scheme property of a particular registered scheme under receivership were held by a licensed custodian (that is, a corporation holding an AFSL authorising the provision of custodial or depository services), the custodian would be required to notify of the receivership only on those public documents and negotiable instruments relating to the registered scheme

[Schedule 3, item 6, subparagraph 428(2A)(b)(ii)]. On the other hand, if the scheme property were held by another corporation (for example, an unlicensed custodian), the unlicensed custodian would be required to notify of the receivership on all its public documents and negotiable instruments, pursuant to subsection 428(1).

3.25 Failure to comply with the notification obligations in this Schedule is a strict liability offence *[Schedule 3, item 7, subsection 428(3)]*, carrying a maximum penalty of 15 penalty units *[Schedule 3, item 18, Schedule 3]*.

3.26 The offence previously carried a maximum penalty of 10 penalty units or imprisonment for 3 months, or both. The offence remains a strict liability offence but the penalty has been changed to ensure it is consistent with the Attorney-General's Department Guide to Framing Criminal Offences (the Guide).

3.27 Strict liability, and the level of penalty, is appropriate, for the following reasons:

- notification of receivership or that a controller is acting is critical information that must be communicated to persons dealing with an insolvent entity, and the use of strict liability is necessary to protect the integrity of the regime;
- the requirement is clear and easy to understand, and the offence depends entirely on the action or non-action of the person who is liable for the offence;
- the offence no longer carries a term of imprisonment, making it consistent with section 2.2.6 of the Guide which states that imprisonment should not be used for strict liability offences;
- following the removal of the 3 month term of imprisonment, the offence now attracts a maximum penalty of 15 penalty units, which is consistent with the fine/imprisonment ratio of 5 penalty units for 1 month's imprisonment, which the Guide indicates should be followed unless there are cogent reasons to depart from it (section 3.1.3).

Modified reporting requirements

3.28 Subsection 429(2) requires the reporting officer of a corporation that has property to which a controller has been appointed, to report to the controller on all the corporation's affairs.

3.29 The Schedule modifies this reporting obligation for the following corporations that have property to which a controller has been appointed:

- a responsible entity of a registered scheme, in the case of scheme property;
- a licensed trustee company that holds the property on trust; and
- a corporation that holds an AFSL authorising the provision of custodial or depository services that holds the property on trust.

3.30 The modified reporting obligation means the reporting officers of these corporations must report to the controller only on the affairs of the corporation to the extent they relate to the particular registered scheme or trust containing property in respect of which the controller is acting. *[Schedule 3, item 13, subsection 429A(1) and item 8, subsection 429(2A)]*

3.31 Requiring these corporations to report only on the affairs relating to the particular affected registered scheme or trust will reduce unnecessary compliance and reporting burdens, whilst ensuring the controller (and ASIC) receive the required information regarding the property in respect of which the controller has been appointed.

3.32 When property is held by a custodian, the modified reporting obligations will only apply to licensed custodial arrangements (where the custodian holds an AFSL authorising the provision of custodial or depository services) *[Schedule 3, item 13, subparagraph 429(2A)(a)(ii)]*. Where the custodian is unlicensed, the custodian must continue to report to the controller on all its affairs (including in relation to other trusts to which the controller has not been appointed), as required under subsection 429(2).

Scheme property not held by a responsible entity

3.33 Where a person becomes a controller of scheme property of a registered scheme that is held by a licensed custodian and not the responsible entity of the registered scheme, the controller must not serve a notice on the licensed custodian. *[Schedule 3, item 13, subsection 429A(2)]*.

3.34 Instead, the controller must, as soon as practicable, serve a notice on the responsible entity of the affected registered scheme *[Schedule 3, item 13, paragraph 429A(3)(e)]*. A director or secretary of the responsible entity must report to the controller, in the prescribed form, on the affairs of the relevant registered scheme as at the control day, within 14 days (or any further period allowed, as explained below in paragraph 3.39) *[Schedule 3, item 13, paragraph 429A(3)(f)]*.

3.35 Requiring the controller to issue a notice to the responsible entity recognises that the responsible entity is in a much better position to provide a report to the controller on the affairs of the relevant scheme.

3.36 The corporation holding the scheme property continues to have an obligation to report to the controller where the corporation holding the scheme property is:

- a licensed trustee company, but only in respect of the affairs of the particular scheme;
- another corporation (for example, an unlicensed custodian or sub-custodian), in respect of all the affairs of the custodian (paragraph 429(2)(b)). In the case of an unlicensed custodian, the custodian may not have many affairs that do not relate to the scheme which is one reason the policy intent is not to limit the reporting obligations of unlicensed custodians (and sub-custodians).

[Schedule 3, item 8, subsection 429(2A)]

3.37 The requirement in subparagraph 429(2)(c)(i) — that the controller must lodge a copy of the report with ASIC within one month of receiving it from the reporting officers, including either a notice setting out any comments the controller sees fit to make or a notice indicating the controller did not see fit to make any comments — applies to the report from the responsible entity *[Schedule 3, item 13, paragraph 429A(3)(g)]*. The amendments provide the controller will have qualified privilege in relation to comments made *[Schedule 3, item 4, paragraph 426(b)]*, consistent with the position relating to other reports received by the controller.

3.38 The controller must send a copy of the report, as lodged, to the responsible entity, as well as the corporation that holds the scheme property, unless the scheme property is held by a licensed custodian *[Schedule 3, item 13, paragraph 429A(3)(h)]*.

3.39 Subsections 429(3) to (5) set out the process by which a reporting officer of a corporation that has been served a notice by a controller to report on the affairs of the corporation may apply for an extension of time by which to report. The amendments replicate those rules for a reporting officer of a responsible entity that has been served a notice to report by a controller [*Schedule 3, item 13, paragraph 429A(3)(g)*]. This means that:

- a director or secretary of the responsible entity may apply to the controller or the Court for an extension of time by which to report to the controller;
- if the application is made to the controller, the controller may agree to the extension if they believe there are special reasons for doing so and must give notice in writing of the extension and lodge that notice as soon as practicable after it is granted; or
- if the application is made to the Court, the Court may make an order extending the period for reporting to the controller and a director or secretary of the responsible entity must, as soon as practicable, lodge a copy of that order with ASIC.

3.40 Consistent with the existing rules, the Schedule addresses the appointment of an additional or replacement controller to scheme property not held by a responsible entity. Where this occurs, the amendments provide the controller is not required to issue a notice to the responsible entity where that person became a controller to act either with an existing controller or in place of a controller who has died or ceased to be controller [*Schedule 3, item 9, subsection 429(6)*]. Not requiring the new controller to issue the notice is appropriate given the requirement to issue the notice would already have been fulfilled by the incumbent controller.

3.41 If, however, the replacement controller is appointed due to the death or cessation of a previous controller and the previous controller did not issue the required notice prior to their death or cessation, the amendments provide the replacement controller must issue the required notice to the responsible entity [*Schedule 3, item 10, subsection 429(6A) and item 10, paragraph 429(6A)(a)*].

3.42 Subsection 429(7) provides that where a corporation is being wound up and the same person acts as both controller and liquidator, the rules for reporting to a controller, broadly, continue to apply. These amendments extend the operation of this subsection to also cover cases where the property to which the controller has been appointed is scheme property. [*Schedule 3, item 12, subsection 429(7)*]

Consequential amendments

3.43 These amendments move two definitions from section 761A to section 9:

- ‘custodial or depository services’, which cross-references to the definition in section 766E; and
- ‘licensed trustee company’, which cross-references to the definition in Chapter 5D.

[Schedule 3, item 1, section 9 and item 15, section 761A]

3.44 These changes are necessary as the terms ‘custodial or depository services’ and ‘licensed trustee company’ no longer operate exclusively in Chapters 7 and 5D respectively and it is, therefore, appropriate that they be defined in section 9 (which applies to the entire Act).

3.45 Minor amendments have been made to the references to ‘custodial or depository services’ in paragraph 601RAC(3)(b) and section 766E as this term is no longer defined in Chapter 7.
[Schedule 3, item 14, paragraph 601RAC(3)(b); item 16, subsection 766E(1); and item 17, paragraph 766E(2)(a)]

3.46 Likewise, minor amendments have been made to the references in paragraphs 53(b) and paragraph 283(1)(aa) to ‘licensed trustee company’ as this term is no longer defined in Chapter 5D.
[Schedule 3, items 2 and 3, paragraphs 53(b) and 283AC(1)(aa)]

3.47 A new heading — ‘Property of corporation’ has been introduced to improve the readability of section 428. *[Schedule 3, item 5, subsection 428(1)]*

Application and transitional provisions

3.48 The amendments apply from the date of Royal Assent.

Chapter 4

Repeal of inoperative Acts and provisions of the taxation law

Outline of chapter

4.1 Schedule 4 to this Bill repeals several inoperative acts in the Treasury portfolio as well as amending the taxation law to remove a number of inoperative or spent provisions.

Context of amendments

Background

4.2 There are various reasons why Acts and provisions within an Act can become spent or cease to be operative.

4.3 Some Acts or provisions in the law are intended to apply only for a limited period. Once this period expires, the provisions are spent and no longer have any effect.

4.4 In other cases, while the Act or provision is intended to apply on an ongoing basis, changes in external circumstances, such as to the way entities behave or other provisions of the law, can mean that in practice the provision no longer applies to anything and has become inoperative.

4.5 While these spent or inoperative Acts and provisions have no application to any entity, they remain on the statute book until repeal by Parliament. Retaining these provisions increases the volume of Commonwealth legislation, without providing any benefit.

Summary of new law

4.6 Schedule 4 to this Bill repeals several inoperative acts in the Treasury portfolio as well as amending the taxation law to remove a number of inoperative or spent provisions.

Detailed explanation of new law

Repeal of the Commonwealth Borrowing Levy

4.7 Part 1 of Schedule 4 repeals the *Commonwealth Borrowing Levy Act 1987* and the *Commonwealth Borrowing Levy Collection Act 1987*. [Schedule 4, items 1 and 2, the whole of the *Commonwealth Borrowing Levy Act 1987* and the *Commonwealth Borrowing Levy Collection Act 1987*]

4.8 These Acts imposed and provided for the collection of the Commonwealth Borrowing Levy – a tax on borrowings by certain commonwealth-controlled entities. Since changes to the governance framework for Commonwealth-controlled entities in 1997, the rate of the levy has been set at zero by the *Commonwealth Borrowing Levy Regulations*. As a result, no tax is payable as a result of the levy.

4.9 Additionally, the levy only ever applied to a small group of entities listed in the Schedule to the *Commonwealth Borrowing Levy Act 1987*, most of which have now either ceased to exist, or been privatised and exempted from the levy.

4.10 Given this, neither the *Commonwealth Borrowing Levy Act 1987* nor the *Commonwealth Borrowing Levy Collection Act 1987* have any ongoing operative effect.

4.11 The repeal of these Acts will also result in the *Commonwealth Borrowing Levy Regulations* lapsing as a result of the repeal of the provision enabling the regulations to be made.

Repeal of the tax-exempt infrastructure borrowing concession

4.12 Part 2 of Schedule 4 repeals Division 16L of the *Income Tax Assessment Act 1936* (ITAA 1936), the *Development Allowance Authority Act 1992* (DA Act) and the *Infrastructure Certificate Cancellation Tax Act 1994* (ICCT Act). [Schedule 4, items 10, 11 and 17, the whole of the DA Act and ICCT Act and Division 16L of the ITAA 1936]

4.13 Division 16L, together with the DA Act and ICCT Act, provides for income in relation to borrowings for certain infrastructure projects to be non-assessable, but also not to give rise to deductions, for a 15 year period, subject to conditions being met in relation to the project and the use of the borrowings. If the conditions are not met at any point in the life of the project, additional tax will be imposed to recover the benefit of the concessions.

4.14 This tax-exempt infrastructure borrowing concession was closed to new projects in 1997. As the tax concession is only available in relation to borrowings for a project for 15 years, it has had no operation since 2012.

4.15 The repeal of these Acts will also result in the *Development Allowance Authority Regulations* lapsing as a result of the repeal of the provision enabling the regulations to be made.

Repeal of the concession for equity investments by lenders in small and medium enterprises

4.16 Part 3 of Schedule 4 repeals Division 11B of the ITAA 1936.
[Schedule 4, item 34, Division 11B of the ITAA 1936]

4.17 Division 11B broadly allows entities that acquire at least 10 per cent of the ordinary shares of an enterprise in the course of a business of lending money, to treat any profit or loss from the disposal of those shares as being a capital gain rather than ordinary income.

4.18 The intention of this provision was to improve access to finance by small and medium enterprises by providing a tax incentive for banks and other entities to lend to and invest in these businesses. It did so by treating the gains or losses that financial institutions made from the disposal of an eligible equity interest in the small or medium enterprise as capital gains or losses that were subject to CGT rather than ordinary income or general deductions, allowing the lending entity to apply indexation to reduce the value of any gain that arose (see paragraph 5.4 to 5.15 of the Explanatory Memorandum for the *Taxation Laws Amendment (No.3) Bill 1996*).

4.19 Subsequently, changes were made to the taxation law to freeze indexation for all existing CGT assets from 11.45 am on 21 September 1999 and remove access to indexation for all assets subsequently acquired by taxpayers.

4.20 As a result of the removal of indexation, the ‘concession’ in Division 11B no longer provides any benefit to financial institutions. There is no evidence that any entities are currently accessing the provisions, leaving them, in practice, inoperative.

Consequential amendments

4.21 Schedule 4 includes a number of consequential amendments to remove references to the repealed provisions and Acts in the taxation law

and other Commonwealth legislation. *[Schedule 4, items 3 to 8, 12 to 16, 18 to 32, 35 to 40 and 42, Part 7 of the AeroSpace Technologies of Australia Limited Sale Act 1994, section 52 of the CSL Sale Act 1993, Schedule 3 to the Medibank Private Sale Act 2006, section 54 to the Moomba-Sydney Pipeline System Sale Act 1994, section 28 to the Qantas Sale Act 1992, section 42 of the Snowy Mountains Engineering Corporation Limited Sale Act 1993, section 56 of the Airports (Transitional) Act 1996, the definition of 'assessment' in subsection 6(1), the note to subsection 82KZME(1), subsection 82KZME(6), paragraphs 126(1)(d) and 128B(3)(bb) and Division 16L of the ITAA 1936, subsection 272-90(10) in Schedule 2F to the ITAA 1936, the items headed 'interest' and 'shares' in the table in section 10-5, the item headed 'financial transactions' in the table in section 11-15, the items headed 'infrastructure' and 'shares' in the table in sections 12-5, the item headed 'infrastructure' in the table in section 13-1, paragraph 104-71(3)(a), item 7 in section 109-60, items 9 and 12A of the table in section 112-97, paragraphs 118-425(13)(d) and 118-427(14)(d), subsections 230-460(14), items 1 and 2 in subsection 713-140(5) and the note to subsection 721-10(2) in the Income Tax Assessment Act 1997, subsection 3B(1B), section 8AB, paragraph 8J(2)(ga) and subsections 8W(1B), 13K(11), 15(4) and 15A(11) of the Taxation Administration Act 1953 and item 105 in the table in subsection 250-10(1) of Schedule 1 and item 3 in the table in subsection 355-65(5) of Schedule 1 to the Taxation Administration Act 1953 and the whole of the Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996]*

Application and transitional provisions

Application dates

4.22 The amendments relating to the Commonwealth Borrowing Levy apply from the day after the Bill receives Royal Assent. However, the amendments make any entity liable to pay Commonwealth Borrowing Levy. *[Item 5 of the table in clause 2 of the Bill and Schedule 4, item 9]*

4.23 The amendments relating to the tax-exempt infrastructure borrowing concession, except as they relate to the closure of the Development Allowance Authority, do not apply in relation to a borrowing that has benefitted from the concession. *[Schedule 4, subitem 33(1)]*

4.24 This means that while the provisions will be repealed going forwards, projects that benefitted from the concessions will still be required to repay the benefit of the concession if they breach the conditions imposed by the legislation.

4.25 The abolition of the Development Allowance Authority will apply from the day after Royal Assent. To the extent it may be required by the residual application of the concession, the Commissioner of Taxation will be able to exercise the powers and functions of the Authority. *[Schedule 4, subitems 33(1) and (2)]*

4.26 Finally, the amendments relating to equity investment in small and medium enterprises will apply to assessments for 2015-16 and subsequent income years. *[Schedule 4, subitem 41(1)]*

4.27 However, to ensure the measure can have no effect on arrangements entered into prior to the repeal, the amendments will not apply in respect of threshold interests acquired before the day of Royal Assent. *[Schedule 4, subitem 41(2)]*

Transitional rules

4.28 Schedule 4 also includes general savings provisions. These provisions, which are standard when there are repeals of tax legislation that has become inoperative, preserve the rights and obligations of taxpayers and the Commissioner of Taxation in relation to past years. This ensures that the repeal can have no effect on liabilities and entitlements in prior income years, even where these liabilities or entitlements are not identified until after the repeal commences. *[Schedule 4, items 43 to 47]*

