
TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING)
BILL 2018: MISCELLANEOUS AMENDMENTS

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ABN	Australian Business Number
ABS Act	<i>Australian Bureau of Statistics Act 1975</i>
ACCC	Australian Competition and Consumer Commission
APRA	Australian Prudential Regulation Authority
APRA Act	<i>Australian Prudential Regulation Authority Act 1998</i>
ASIC	Australian Securities and Investments Commission
Banking Act	<i>Banking Act 1959</i>
Exposure draft Bill	<i>Treasury Laws Amendment (Measures for a later sitting) Bill 2018: Miscellaneous Amendments</i>
Competition and Consumer Act	<i>Competition and Consumer Act 2010</i>
Corporations Act	<i>Corporations Act 2001</i>
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Financial Sector (Transfer and Restructure) Act	<i>Financial Sector (Transfer and Restructure) Act 1999</i>
Legislation Act	<i>Legislation Act 2003</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
SES	Senior Executive Service
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

Chapter 1

Miscellaneous amendments

Outline of chapter

1.1 Schedule 1 to the exposure draft Bill makes a number of miscellaneous amendments to legislation in the Treasury portfolio. These amendments are part of the Government's commitment to the care and maintenance of the Treasury portfolio legislation.

1.2 These amendments make minor technical changes to correct spelling errors, bring provisions in line with drafting conventions, and repeal inoperative provisions. The Schedule also makes minor technical amendments to remove administrative inefficiencies and clarifies the law ensuring the law operates in accordance with the policy intent.

Context of amendments

1.3 The 2008 Tax Design Review Panel recommended a channel to regularly progress amendments for the care and maintenance of the tax law. The Panel was appointed to examine how to reduce delays in enacting tax legislation and improve the quality of the tax law changes.

1.4 Miscellaneous amendments to Treasury portfolio legislation are periodically made to remove anomalies, correct unintended outcomes and improve the quality of legislation within the Treasury portfolio.

1.5 Progressing such amendments gives priority to the care and maintenance of legislation in the Treasury portfolio.

Summary of new law

1.6 These miscellaneous amendments address technical deficiencies and legislative uncertainties within Treasury portfolio legislation including taxation, superannuation, corporations, and competition and consumer laws.

1.7 The Schedule contains the following Parts:

- Part 1—Amendments commencing on the day after Royal Assent;
- Part 2—Amendments commencing on the first 1 January, 1 April, 1 July or 1 October to occur after Royal Assent;

- Part 3—Amendments commencing 28 days after Royal Assent; and
- Part 4—Amendments commencing on 1 January 2019.

Detailed explanation of new law

Part 1—Amendments commencing on the day after Royal Assent

Amendment to the APRA Act

1.8 Schedule 1 to the exposure draft Bill amends subsection 55(2) of the APRA Act to omit the reference to subsection 55(1A), which was repealed by the *Governance Review Implementation (Treasury Portfolio Agencies) Act 2007*. [*Schedule 1, item 1, subsection 55(2) of the APRA Act*]

Amendments to the Banking Act

Defences to disclosure of protected information

1.9 Schedule 1 to the exposure draft Bill amends paragraph 11CM(1)(c) of the Banking Act to ensure that the disclosure of protected information is permitted where it is made in accordance with a provision referred to in paragraph 56(2)(c) of the APRA Act. [*Schedule 1, item 2, paragraph 11CM(1)(c) of the Banking Act*]

1.10 Paragraph 11CM(1)(c) of the Banking Act ensures that the defences against committing an offence under the APRA Act for the disclosure of protected information also apply to the equivalent offence in the Banking Act.

1.11 Paragraph 11CM(1)(c) previously referred to the specific provisions containing these defences in section 56 of the APRA Act. These amendments apply a more flexible approach by updating paragraph 11CM(1)(c) to refer to the part of section 56 that lists the defences in that section (that is, paragraph 56(2)(c) of the APRA Act). This approach ensures that any new defences that are inserted into section 56 of the APRA Act are automatically extended to paragraph 11CM(1)(c) without the need for consequential amendments. The amendments also ensure that new subsections 56(7D) to (7F) of the APRA Act apply for the purposes of paragraph 11CM(1)(c) of the Banking Act.

1.12 The amendment applies for all disclosures, regardless of whether the disclosure was made before or after the amendment commences. [*Schedule 1, subitem 66(1)*]

1.13 The amendment does not affect the status of any disclosures that were permitted under the previous provision. This is because any such disclosures continue to be permitted under the amended provision.

Other Amendments

1.14 Schedule 1 amends paragraph 11E(2)(b) of the Banking Act to ensure that it correctly refers to subsection 11E(1B) instead of subsection 11E(1). [*Schedule 1, item 3, paragraph 11E(2)(b) of the Banking Act*]

1.15 Subsection 11E(2) makes it an offence for a foreign ADI to accept a deposit from a person in Australia without first informing them of certain requirements under the Banking Act that the foreign ADI is not subject to.

1.16 Section 11E was amended by the *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018*. As part of these amendments, the provision that exempts a foreign ADI from certain regulatory requirements in respect of deposits made by persons in Australia was moved to subsection 11E(1B). These amendments ensure that this exemption is correctly referred to in subsection 11E(2).

1.17 Schedule 1 also amends subsection 14A(6) of the Banking Act to amend the term ‘officer’ so that it is defined in relation to a ‘body corporate’ instead of an ‘ADI’. [*Schedule 1, item 4, definition of ‘officer’ in subsection 14A(6) of the Banking Act*]

1.18 This amendment corrects an inconsistency between the way that the term ‘officer’ was previously defined and the rest of section 14A of the Banking Act, which refers to ‘body corporates’ rather than ‘ADIs’. The amendment does not affect the meaning of the term ‘officer’.

Amendments to the Competition and Consumer Act

Extensions for time to comply

1.19 Schedule 1 to the exposure draft Bill amends the period of time within which a corporation must comply with a notice to obtain information or produce documents in relation to compliance with industry codes.

1.20 Currently under section 51ADD, corporations have 21 days to comply with a notice issued by the ACCC unless an extension is sought under section 51ADE. The current drafting only allows for one extension of time for compliance per application. This means any further extension requires a revocation of the original notice and reissue.

1.21 This amendment enables subsequent extensions of time to be sought under the one application, reducing the administrative burden of processing the same application twice for no real benefit. [*Schedule 1, item 5, subsection 51ADE(1) of the Competition and Consumer Act*]

1.22 The amendment applies to notices that are given on or after the amendment commences. [*Schedule 1, subitem 66(2)*]

Authorisation of conduct

1.23 Schedule 1 inserts paragraph 90(8)(ba) to ensure authorisation of conduct under sections 45E and 45EA is subject to the same test as all other *per se* conduct.

1.24 Section 90 sets out the ACCC's powers and obligations in relation to authorising particular conduct subject to an application. Subsection 90(7) provides that the ACCC must not make an authorisation to allow a person to engage in conduct to which the provisions of Part IV would apply unless it would not substantially lessen competition or would benefit the public. Subsection 90(8) carves out the substantial lessening of competition test from subsection 90(7) for cartel conduct, secondary boycotts and resale price maintenance (i.e. *per se* breaches). *Per se* breaches are regarded as anti-competitive and are prohibited, regardless of whether they have the purpose, effect or likely effect of substantially lessening competition.

1.25 Currently, subsection 90(8) does not include references to sections 45E and 45EA, which prohibit contracts, arrangements or understandings affecting the supply or acquisition of goods or services. This amendment bolsters the regulatory regime and creates greater consistency by ensuring the authorisation of conduct under sections 45E and 45EA is subject to the same test as all other *per se* conduct. [*Schedule 1, item 6, paragraph 90(8)(ba) of the Competition and Consumer Act*]

1.26 The amendment applies to authorisations made on or after the amendment commences. [*Schedule 1, subitem 66(3)*]

1.27 Schedule 1 also repeals subsection 91(3) of the Competition and Consumer Act as that provision was replicated by subsection 88(3) and therefore is no longer required. Both provisions provide that an authorisation granted by the ACCC may be expressed to be subject to such conditions as are specified in the authorisation. [*Schedule 1, item 7, paragraph 91(3) of the Competition and Consumer Act*]

Class exemptions

1.28 Schedule 1 inserts a new provision to ensure that, despite subsection 44(1) of the Legislation Act, instruments made under section 95AA of the Competition and Consumer Act are subject to disallowance in accordance with section 42 of the Legislation Act.

1.29 The *Competition and Consumer Amendment (Competition Policy Review) Act 2017* amended Part VII of the Competition and Consumer Act to give the ACCC power to make class exemptions under section 95AA. Part IV and the related provisions of the Competition and Consumer Act (including Part VII) facilitate both the establishment and operation of an intergovernmental scheme. Thus, legislative instruments made under those provisions come within the scope of the exemption

from disallowance in section 44 of the Legislation Act unless the legislation states otherwise.

1.30 Section 95AA of the Competition and Consumer Act does not contain an express provision overriding the effect of subsection 44(1) of the Legislation Act. Accordingly, legislative instrument currently made under section 95AA are not disallowable. However, the Explanatory Memorandum to the Bill inserting section 95AA stated that the class exemptions are disallowable (see paragraph 9.106 of the Explanatory Memorandum to the Competition and Consumer Amendment (Competition Policy Review) Bill 2017). This amendment corrects the omission of the express provision to ensure consistency with the original policy intention. [*Schedule 1, item 8, section 95AA of the Competition and Consumer Act*]

Delegation to grant extensions of time

1.31 Schedule 1 to the exposure draft Bill amends section 155 of the Competition and Consumer Act to expressly provide for variations for extensions of time to be issued by the ACCC, and to enable the delegation of the same power to SES (or acting SES) of the ACCC.

1.32 Subsection 155(1) provides that where there is reason to believe that a person is capable of furnishing information, producing documents or giving evidence relating to certain matters, an ACCC member (i.e. the Chair, Deputy Chair or a Commissioner) can require a person to provide that information by giving them a notice.

1.33 A large proportion of notices that the ACCC issues entail at least one or more variations. The most common variation is an extension of time to respond to the notice granted by the Commission relying on subsection 33(3) of the *Acts Interpretation Act 1901*. It is administratively burdensome to have a member of the ACCC issuing extensions of time to comply each time an application is made.

1.34 The amendments support the efficient use of regulator's time by enabling SES (and acting SES) of the ACCC to directly extend the time to respond to a notice without having to seek approval of the Chair, Deputy Chair or Commissioner. The power for the Commission to delegate extensions of time is appropriate as it is sufficiently narrow (i.e. only pertains to extensions of time) and the class of delegates has appropriate knowledge to assess the suitability of granting the extension. Under the new provision delegates must also comply with any directions of the ACCC member. [*Schedule 1, items 9 and 10, subsections 155(2AA), (2AB), (8B) and (8C) of the Competition and Consumer Act*]

1.35 The amendments apply to notices given on or after the amendments commence. [*Schedule 1, subitem 66(4)*]

Amendments to the Corporations Act

Notices and terms used in the external administration provisions

1.36 Schedule 1 to the exposure draft Bill provides for electronic disclosure of declarations of relationships and indemnities by administrators and liquidators on or after commencement of the amendments. The amendments correct an anomaly which required these declarations to be sent via post separately from other documents being distributed at the same time. *[Schedule 1, items 14, 15, 17, 18, 21 and 22 and subitem 66(5), subsections 436DA(3) and 506A(2), and paragraphs 600G(1)(aa) and 600G(1)(m) of the Corporations Act]*

1.37 The Insolvency Practice Schedule allows industry bodies to lodge with ASIC a notice of possible grounds for disciplinary action against a registered liquidator (see section 40-100 of Schedule 2 to the Corporations Act). The exposure draft Bill ensures that this notice is not available for inspection and copying. This is consistent with the treatment of other notices which contain sensitive information. *[Schedule 1, item 45, subparagraph 1274(2)(a)(ivb)]*

1.38 Schedule 1 also replaces incorrect references to ‘administrator’ in subsections 506A(3) and (6) of the Corporations Act with a reference to ‘liquidator’. The provision deals with declarations by a liquidator and the changes correct the drafting errors. *[Schedule 1, item 19, subsections 506A(3) and (6) of the Corporations Act]*

Effect of deregistration on the cancellation of licences

1.39 Schedule 1 inserts a new subsection 601AH(6) into the Corporations Act which clarifies that subsection 601AH(5) does not affect the cancellation of an Australian financial services licence held by a company where the licence is cancelled because the company is deregistered. *[Schedule 1, item 24, subsection 601AH(6) of the Corporations Act]*

1.40 Subsection 601AH(5) deems a company that is reinstated to never have been deregistered.

Misdescribed amendments in the Asia Region Funds Passport Act

1.41 Schedule 1 to the exposure draft Bill makes consequential amendments to the Courts general power to make orders in section 1325 of the Corporations Act. These amendments are included in the *Corporations Amendment (Asia Region Funds Passport) Act 2018* but they could not be incorporated into the Corporations Act because they are misdescribed. *[Schedule 1, items 46 to 48, subsections 1325(1) to (3) of the Corporations Act]*

Amendment to the Financial Sector (Transfer and Restructure) Act

1.42 Schedule 1 to the exposure draft Bill amends subsection 11(1A) and the note in subsection 14(2) of the *Financial Sector (Transfer and*

Restructure) Act 1999. Under section 11 of this Act, APRA may make a ‘voluntary transfer approval’ for the transfer of business. However, subsection 11(1A) and the note in subsection 14(2) refers to APRA making a ‘determination’, which is inconsistent with the terminology used in section 11. *[Schedule 1, items 61 and 62, subsections 11(1A) and 14(2) of the Financial Sector (Transfer and Restructure) Act]*

Amendments to the Credit Act

1.43 Schedule 1 to the exposure draft Bill amends paragraph 266(b) of the Credit Act to ensure that ASIC may issue a notice to produce books to persons that ASIC, on reasonable grounds, suspects to have been a party to engaging in a credit activity. *[Schedule 1, item 64, paragraph 266(b) of the Credit Act]*

1.44 This amendment replaces the previous requirement that a person must have been engaging in a credit activity ‘in ASIC’s opinion’ in order for ASIC to issue a notice to produce books. The updated requirement ensures that ASIC can issue notices where there is a reasonably held suspicion of such activities and is consistent with the approach taken in other provisions of the Credit Act such as in sections 253, 269, 270 and 274.

1.45 The amendment applies in relation to notices issued on or after the time that it commences (being the day after the amendment receives the Royal Assent). *[Schedule 1, subitem 66(6)]*

Other Miscellaneous Amendments

1.46 References to the *Legislative Instruments Act 2003* are replaced with references to the *Legislation Act 2003*. The *Legislative Instruments Act 2003* was renamed when the Act was amended to introduce a consolidated framework for the publication of Commonwealth Acts as well as the registration of Commonwealth instruments. *[Schedule 1, items 13, 20, 25, 31, 33, 44 and 63, subsections 200AB(1), 200AB(2), 200A(1A), 579Q(1), 579Q(2), 601YAA(5), 907B(3), 926A(5) and 1020AF(1) of the Corporations Act; and subsections 109(6) and 163(6) of the Credit Act]*

1.47 There are a number of typographical changes in the Corporations Act in reference to self managed super funds, so that the descriptor ‘self-managed’ is replaced with ‘self managed’ to more accurately reflect current terminology. *[Schedule 1, items 27, 28, 32 and 36 to 38, section 761A, paragraphs 911A(2)(j) and 1012D(2A)(a), subsections 1012D(2A), 1015D(2) and 1017C(6) of the Corporations Act]*

1.48 This Bill also makes a number of small corrections to typographical errors in various parts of the Corporations Act and removes incorrect spacing between words and dashes. *[Schedule 1, items 11, 12, 16, 23, 26, 29, 30, 34, 35, 39 to 43, 49 to 60, and 65, definition of ‘registered body’ in section 9, subparagraph 135(1)(b)(ii), subsection 477(2B), paragraph (b) of the definition of ‘external administration’ in subsection 600H(2), paragraph 710(3)(e), subsection 769B(7), Subdivision C of Division 2 of Part 7.5A (heading),*

subparagraph 946B(1)(g)(iii), section 1011A (heading), subsection 1017DA(1), paragraph 1384(3)(b), Part 10.10 (heading), Part 10.13 (heading), section 1546X (heading), table items 173S and 173T in Schedule 3, paragraphs 32(1)(a) to (k) of Schedule 4, paragraphs 35(1)(a), (b) and (c) of Schedule 4, paragraphs 35(2)(c) and (d) of Schedule 4, paragraphs 36(1)(a) to (d) of Schedule 4, paragraphs 38(2)(a) to (i) of Schedule 4, paragraphs 39(2)(a) and (b) of Schedule 4, and paragraphs 39(4)(a) and (b) of Schedule 4 of the Corporations Act and subsection 331(2) of the Credit Act]

Part 2—Amendments commencing on the first 1 January, 1 April, 1 July or 1 October to occur after Royal Assent

Removing inoperative provisions relating to tax offsets for the first child and childcare expenses.

1.49 Schedule 1 to the exposure draft Bill removes inoperative provisions implementing the first child tax offset and childcare expenses tax offset. [*Schedule 1, items 67, 70, 72 to 86, 99 and 100, section 169A of the A New Tax System (Family Assistance) (Administration) Act 1999; table item 24 in subsection 170(10AA) of the ITAA 1936; table item headed ‘child’ in section 13-1, Subdivisions 61-I and 61-IA, table item 25 in subsection 63-10(1), table item 10 in section 67-23, table item 4 in section 960-265, and definitions of ‘approved child care’, ‘approved child care fees’, ‘base year’, ‘child care base week’, ‘child care offset limit’, ‘child event’, ‘entitled to child care benefit’, ‘entitlement to child care benefit’, ‘legally responsible’ and ‘primary entitlement’ in subsection 995-1(1) of the ITAA 1997; and sections 45-340 and 45-375 in Schedule 1 to the TAA 1953]*

1.50 Subdivision 61-I provides a tax offset for the first child had on or after 1 July 2001 but before 1 July 2004 for a period of no more than five years. Subdivision 61-IA provides a tax offset for childcare expenses incurred before 1 July 2007. Both Subdivisions are now inoperative and outside standard amendment period.

Removing inoperative provisions from the ITAA 1936

1.51 Schedule 1 to the exposure draft Bill removes section 6A of the ITAA 1936, which deems someone to a ceased to have a right to receive certain superannuation benefits in certain situations and to quantify those benefits for the operation of certain provisions of the ITAA 1936. All the provisions to which this treatment is relevant have been repealed from the ITAA 1936 and section 6A no longer has any residual operation. [*Schedule 1, item 68, section 6A of the ITAA 1936]*

1.52 Schedule 1 also removes section 27 of ITAA 1936, which replaced the *Taxation of Loans Act 1923* to ensure that despite any other Act interest from government bonds was always taxable. Section 27 was drafted in different terms as ITAA 1936 included these amounts in assessable income already. The only change required at the time was to override paragraph 23(q) of the ITAA 1936 which exempted foreign sourced income of an individual that was subject to tax in a foreign jurisdiction. Paragraph 23(q) has been repealed and section 27 has been inoperative since then. [*Schedule 1, items 69 and 71, section 27 of the ITAA 1936 and table item headed ‘interest’ in section 10-5 of the ITAA 1997]*

Removing rules for transitioning to the SIS Act

1.53 Schedule 1 to the exposure draft Bill removes or amends a number of transitional provisions that were included in the SIS Act when it was enacted.

1.54 These provisions assisted the move by superannuation funds that were previously regulated, and eligible for tax concessions, under the *Occupational Superannuation Standards Act 1987* (OSSA 1987) to the regulatory regime introduced by the SIS Act in 1993.

1.55 The main provisions that are repealed by these amendments are the transitional rule contained in section 50 of the SIS Act. [*Schedule 1, item 92, section 50 of the SIS Act*]

1.56 Subsection 50(1) contained a special rule for late lodgements of elections under section 19 of the SIS Act to become a registered superannuation fund (RSF). This rule allowed late lodging funds to be treated as an RSF from the start of the 1994-95 income year until the time they actually lodged the election.

1.57 Subsection 50(2) contains another transitional rule that applied to funds that chose not to elect to become regulated under section 19 of the SIS Act, and instead chose to wind up. The rule allowed such funds to have regulated status from the start of the 1994-95 income year until the time they wound up. This transitional rule also required a fund to make a declaration under section 333 of the SIS Act, which was repealed in 2001 (meaning that it has not been possible to apply subsection 50(2) since that time).

1.58 As the transition to the SIS Act occurred 25 years ago, the transitional rules in section 50 have no prospective application. The previous operation of the transitional rules contained in section 50 is not affected by the repeal because the repeal applies on a prospective basis only.

1.59 To qualify for either of the transitional rules in section 50, a fund was required to satisfy the ‘transitional superannuation fund conditions’ in the *Superannuation (Industry) (Transitional Provisions) Regulations 1993 (Transitional Regulations) 1993* (the Transitional Regulations), which were made under subsection 50(5) of the SIS Act. The repeal of section 50 means that these regulations are no longer required, subject to the amendments made to paragraphs 42(1AC)(e) and 42A(4)(d) also in Schedule 1 to the exposure draft Bill.

1.60 Other provisions of the SIS Act that refer to the transitional superannuation fund conditions contained in the Transitional Regulations are amended to replace the reference to the regulations made under section 50 with a reference to the regulations as they applied under the

former section. *[Schedule 1, items 89 and 91, paragraphs 42(1AC)(e) and 42A(4)(d) of the SIS Act]*

1.61 Subsections 42(1AC) contains a special rule to provide complying fund status to funds that purported to make an election under 19(4) to become an RSF but failed to comply with a requirement for making the election. Subsection 42A(4) contains an equivalent provision to subsection 42(1AC) that applies to self-managed superannuation funds.

1.62 Such funds can retain their historic complying status if they actually comply with the requirements within 28 days of being notified of the failure. To retain complying status, the fund must not have contravened a regulatory provision during the period between the purported election and notification, or if they have contravened, the Regulator considers it reasonable for them to be a complying fund.

1.63 An additional requirement in paragraphs 42(1AC)(e) and 42A(4)(d) applies to pre-1994-95 funds. These provisions require that such funds must have been treated as having satisfied the transitional superannuation fund conditions at all times during the period that began at the beginning of their 1994-95 income year and that ended when the trustee purported to have lodged the election under subsection 19(4).

1.64 Although unlikely, it is technically possible that a pre-1994-95 fund that transitioned over to the SIS Act could still discover that it had not satisfied the requirements for making the election.

1.65 To ensure that paragraphs 42(1AC)(e) and 42A(4)(d) apply correctly to any funds that may seek to apply them in the future, the amendments preserve the operation of the Transitional Regulations that were made under section 50 in respect of the pre-lodgement period.

1.66 Consequential amendments are made to remove references to section 50 in other provisions in the SIS Act. The amendments remove the reference to paragraph 50(1)(c) from the definition of ‘reviewable decision’ in subsection 10(1) and repeal the note to subsection 42(1AD) (which referred to subsection 50(2)). *[Schedule 1, items 87 and 90, paragraph (fa) of the definition of reviewable decision’ in subsection 10(1) and the note in subsection 42(1AD) of the SIS Act]*

1.67 Schedule 1 also repeals subsections 19(7) and (8) of the SIS Act to repeal the requirement for compliant pre-SIS Act funds to become an RSF at or before start of their 1994-95 income year. *[Schedule 1, item 88, subsections 19(7) and (8) of the SIS Act]*

1.68 These provisions have no ongoing application as any pre-SIS Act funds have either made the transition to the SIS Act or were wound up.

1.69 The amendments in Schedule 1 do not affect the operation of section 49 of the SIS Act, which extends the operation of any notices

about complying or non-complying status for superannuation funds, approved deposit fund and pooled superannuation trusts under the OSSA 1987 to the SIS Act. Complying status under SIS Act for a given income year is based on the existence or non-existence of compliance and non-compliance notices to determine whether such entities have complying status.

Notification by suppliers of residential premises

1.70 Subsection 14-255 in Schedule 1 to the TAA 1953 requires an entity that makes a supply to which section 14-250 applies to provide the recipient of the supply with a notice setting out certain matters. The notice must contain the information in paragraph 14-255(1)(b), which is intended to assist the purchaser with making the payment to the ATO.

1.71 Currently, subparagraph 14-255(1)(b)(i) requires an entity to provide the name of the supplier and their ABN. However, in some cases, the name of the supplier and the entity that is liable to pay GST in relation to the supply will not be the same. For example, the supplier may be part of a GST group in which a representative member is nominated as being liable to pay GST in relation to all supplies made by entities in the group, rather than the entity that makes the supply.

1.72 To assist the purchaser with identifying who is ultimately liable to GST on the supply, and therefore who the payment to the ATO should be made in relation to, the amendment to subparagraph 14-255(1)(b)(i) refers to the person who is liable to pay the GST on the supply, rather than the entity that made the supply. [*Schedule 1, item 96, subparagraph 14-255(1)(b)(i) in Schedule 1 to the TAA 1953*]

1.73 The amendment applies in relation to supplies that are made on or after the commencement of the Schedule. [*Schedule 1, item 102*]

Refund by Commissioner of amount withheld from payment in respect of a supply of real property

1.74 Section 18-85 of the TAA 1953 allows the Commissioner of Taxation to provide a refund of a section 14-250 withholding payment to the entity that made the supply where there has been an error in the payment and the entity has lodged an application for a refund in the approved form. This section applies wherever a payment has been made under section 14-250, or purportedly under that section, in relation to a 'taxable supply'.

1.75 Where a payment is made purportedly under section 14-250, the supply to which the purported payment relates may not be a taxable supply. For example, if it is of existing residential premises, then that supply will be input taxed and not a taxable supply. To remove doubt that a payment can be made in relation to a purported payment under section 14-250 where the supply to which it relates is later discovered not

to be a taxable supply, Schedule 1 to the exposure draft Bill removes the word ‘taxable’ from the section. *[Schedule 1, items 97 and 98, section 18-85 (heading) and paragraph 18-85(1)(a) in Schedule 1 to the TAA 1953]*

1.76 The amendments apply in relation to supplies that are made on or after the commencement of the Schedule. *[Schedule 1, item 102]*

Machinery provisions applying to administrative penalties under Subdivision 14-E

1.77 Division 298 in Schedule 1 to the TAA 1953 contains the general machinery provisions for collection, recovery and review of all other penalties contained in that Schedule.

1.78 The amendment updates section 298-5 to ensure administrative penalties imposed under Subdivision 14-E in Schedule 1 to the TAA 1953 are covered by Division 298. The machinery provisions in relation to those penalties are procedural laws which apply from the time of commencement of this Schedule. *[Schedule 1, item 101, paragraph 298-5(c) in Schedule 1 to the TAA 1953]*

Other amendments

1.79 Schedule 1 to the exposure draft Bill removes certain provisions in the SIS Act that provide their effect ceases on 1 July 1994. *[Schedule 1, items 93 to 95, sections 382, 384 and 385 of the SIS Act]*

Part 3—Amendments commencing 28 days after Royal Assent

1.80 Schedule 1 to the exposure draft Bill amends section 15 of the ABS Act to update the rules for appointing a person to act as the Australian Statistician (the Statistician).

1.81 The amendments repeal the previous rules and replace them with provisions that allow the Treasurer or another Minister in the Treasury portfolio to, by written instrument, appoint a person to act as the Statistician. Such appointments can be made during a vacancy of the office of Statistician or during any or all periods that the Statistician is absent from duty or from Australia, or is unable to perform the duties of the office. *[Schedule 1, item 103, section 15 of the ABS Act]*

1.82 The previous acting arrangements required a decision by the Governor-General in Council. This approach was out of step with modern drafting practice and standard government procedure where acting appointments for statutory offices are generally made by a Minister.

1.83 The new rules adopt the standard form for acting arrangements and are subject to sections 33AB and 33A of the *Acts Interpretation Act 1901*.

1.84 The new rules do not replicate previous subsection 15(4) of the ABS Act, which extended sections 10 and 11 of the ABS Act (which are about resignation and removal from office) to acting appointments. However, sections 10 and 11 continue to apply to acting arrangements because of subparagraph 33A(1)(e)(ii) of the *Acts Interpretation Act 1901* (which extends the operation of any Acts to an appointee as if the appointee were the holder of the office).

1.85 The amendments also provide a transitional rule to preserve the operation of any instrument made under the previous rules for appointing a person to act as the Statistician. Under this transitional rule any such instrument continues in force, and may be dealt with, as if it had been made under the new rules provided by these amendments. [*Schedule 1, item 104*]

1.86 Allowing the instrument to be dealt with as though it had been made under the new rules provides the Minister with the authority to terminate any acting arrangements that were made under the previous rule at the same time that new acting arrangements are made under the new rules.

Part 4—Amendments commencing on 1 January 2019

Transitional arrangements for the professional standards reforms

1.87 Schedule 1 to the exposure draft Bill amends the application provisions for the reforms inserted by the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* (the Professional Standards Act). These reforms require certain financial advisers (‘relevant providers’) to comply with new education, training and professional standards. Special transitional arrangements apply to relevant providers who are licensed or authorised to provide advice on 1 January 2019 (‘existing providers’).

1.88 The exposure draft Bill corrects a section reference in the definition of ‘existing provider’ in section 1546A. The definition inserted by the Professional Standards Act excludes advisers who are banned, disqualified or suspended under Division 8 of Part 7.6 on 1 January 2019. However, Division 8 of Part 7.6 only covers bannings and disqualifications, not suspensions. Advisers are either suspended by ASIC under section 915C of Corporations Act or agree to serve a period of suspension in an enforceable undertaking under section 93AA of the *Australian Securities and Investments Commission Act 2001*. [*Schedule 1, item 105, definition of ‘existing provider’ in section 1546A of the Corporations Act*]

1.89 The exposure draft Bill amends the application provision in section 1546C of the Corporations Act to ensure that relevant providers

must comply with the new education, training and professional standards if they are banned, or disqualified from providing advice (either in Australia or under the law of a foreign country) or their licence has been suspended. The Professional Standards Act erroneously omits these relevant providers from the application provision, thereby inadvertently exempting them from all of the new standards. *[Schedule 1, items 106 and 107, paragraphs 1546C(1)(a) and (b), and subsection 1546C(4A) of the Corporations Act]*

1.90 ASIC is also given the power to unilaterally alter an enforceable undertaking which prohibits a financial adviser from giving advice on 1 January 2019 to require the person to comply with the new education and training standards. This approach gives ASIC the flexibility to ascertain whether it is appropriate for the financial adviser to comply with all of the education and training standards or only the streamlined requirements that apply to existing providers. *[Schedule 1, item 107, subsections 1546C(4B) and (4C) of the Corporations Act]*

1.91 Amendments are also made to the application provision for the requirement to notify ASIC when a financial adviser has completed their professional year. The application provision in paragraph 1546Z(1)(a) is amended so that it covers all advisers who are banned, disqualified, suspended or subject to an enforceable undertaking which prohibits them from providing advice (either in Australia or under the law of a foreign country). *[Schedule 1, item 108, paragraph 1546Z(1)(a) of the Corporations Act]*