
TREASURY LAWS AMENDMENTS (MEASURES FOR A LATER SITTING)
BILL 2020: MINOR AND TECHNICAL AMENDMENTS

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Chapter 1

Minor and technical amendments

Outline of chapter

1.1 Schedule # makes a number of minor and technical amendments to various laws in the Treasury portfolio. These amendments are part of the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.

1.2 These amendments make minor and technical changes to correct typographical and numbering errors, bring provisions in line with modern drafting conventions, repeal inoperative provisions, remove administrative inefficiencies, address unintended outcomes and update references, ensuring Treasury laws improve to operate as intended.

Context of amendments

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

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

Summary of new law

1.5 These minor and technical amendments address technical deficiencies and legislative uncertainties in various Treasury by:

- correcting spelling and typographical errors;
- fixing incorrect legislative references;
- reducing unnecessary red tape;
- addressing unintended outcomes;
- adopting modern drafting practices;

- enhancing readability and administrative efficiency; and
- repealing redundant and inoperative provisions.

Detailed explanation of new law

Part 1 – Amendments commencing the day after Royal Assent

Amendments to the Australian Charities and Not-for-profits Commission Act 2012

1.6 A note has been added to the end of section 60-65 of the *Australian Charities and Not-for-profits Commission Act 2012* that cross-references section 175-35 of that Act. Section 60-65 provides that a registered entity must give a corrected information statement or financial report within a certain period if the entity discovers a material error. *[Schedule #, item 1, section 60-65 of the Australian Charities and Not-for-profits Commission Act 2012]*

1.7 Section 175-35 of the *Australian Charities and Not-for-profits Commission Act 2012* provides for an administrative penalty for failing to give the Commissioner a statement within the required time. The new note therefore guides the reader to a provision that sets out a potential consequence of failing to comply with the requirement in section 60-65.

Amendments to the Australian Securities and Investments Commission Act 2001

1.8 Section 12(1) of the *Australian Securities and Investments Commission Act 2001* has been amended to remove the requirement for a ministerial direction to be given to ASIC as a ‘written direction’, and substitute a requirement for directions to be given by legislative instrument. *[Schedule #, item 2, section 12(1) of the Australian Securities and Investments Commission Act 2001]*

1.9 Section 12(5) has also been repealed. This has the effect of removing the requirement for ministerial directions to ASIC to be published in the Gazette. *[Schedule #, item 3, section 12(1) of the Australian Securities and Investments Commission Act 2001]*

1.10 These amendments update the requirements for the giving of ministerial directions under the *Australian Securities and Investments Commission Act 2001* with the framework provided in the *Legislation Act 2003*, the effect of which is that a requirement to publish or notify in the Gazette is now satisfied if the instrument is registered as a legislative instrument.

1.11 Ministerial directions given under section 12(1) of the *Australian Securities and Investments Commission Act 2001* that are in

force immediately before the commencement of these amendments, continue to be in force. [Schedule #, item 4, section XX of the *Australian Securities and Investments Commission Act 2001*]

Amendment to the Business Names Registration Act 2011

1.12 The intention of section 88 of the *Business Names Registration Act 2011* was to allow entities that are carrying on a business in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands to obtain a business name without having an Australian Business Number (ABN) on the basis that the definition of ‘Australia’ in the *A New Tax System (Australian Business Number) Act 1999* excludes those territories.

1.13 However, the original definition of ‘Australia’ in the *A New Tax System (Australian Business Number) Act 1999* which excluded any external Territory, was amended by the *Treasury Legislation Amendment (Repeal Day) Act 2015*.

1.14 The *A New Tax System (Australian Business Number) Act 1999* now defines ‘Australia’, when used in a geographical sense, to have the same meaning as in the *Income Tax Assessment Act 1997*. Section 960-505(1) of the *Income Tax Assessment Act 1997* defines ‘Australia’, when used in a geographical sense, to include all the external Territories.

1.15 In the context of the *A New Tax System (Australian Business Number) Act 1999*, the practical implication is that an entity that is carrying on an enterprise in any of Australia's external Territories is now entitled to an ABN. This makes section 88 in the *Business Names Registration Act 2011* redundant and no longer applicable. [Schedule #, item 5, section 88 of the *Business Names Registration Act 2011*]

1.16 Schedule 1 to the *Business Names Registration Act 2011* is amended to update the references to the Co-operatives legislation of States and Territories that have adopted the Co-operatives National Law. [Schedule #, items 6, 7, 8, 9, 10 and 11 paragraphs (1)(a), (2)(a), 5(a), 6(a), 7(a), and 8(a) of Schedule 1 to the *Business Names Registration Act 2011*]

Amendments to the Commonwealth Grants Commission Act 1973

1.17 Section 5(2) of the *Commonwealth Grants Commission Act 1973* is amended by replacing two occurrences of the expression ‘the Northern Territory’ with ‘that Territory’. This minor amendment makes an improvement to the readability of the provision. [Schedule #, item 12, section 5(2) of the *Commonwealth Grants Commission Act 1973*]

1.18 Various amendments are made to sections 8, 9A, 11, 12, 13, 14, 15, 19, 23, 24 and 25 of the *Commonwealth Grants Commission Act 1973* to replace instances of the expressions ‘he or she’, ‘his or her’ and ‘him or her’ with their gender neutral equivalents so that the provisions are consistent with current Commonwealth drafting practice. [Schedule #, items 13 to 22, 24, 25 and 27 to 29, sections 8(3), 8(6A), 9, 9A(1), 11(1), 12(7), 13(1)(c) and

(2)(c), 14(5), 15(1), 19(1) and (2), 23(1), 24 and 25(3) of the Commonwealth Grants Commission Act 1973]

1.19 A technical amendment is made to the heading of section 16AA of the *Commonwealth Grants Commission Act 1973* to better reflect the text of the provision and make it consistent with similar provisions such as sections 16 and 16A. *[Schedule #, item 23, section 16AA of the Commonwealth Grants Commission Act 1973]*

1.20 Section 19 of the *Commonwealth Grants Commission Act 1973* is also amended by inserting a new subsection (2A) to clarify that a determination made under section 19(1) is not a legislative instrument. This is not a substantive exception to the *Legislation Act 2003* as the determination would not otherwise be a legislative instrument for the purposes of that Act, rather the subsection is included for the assistance of readers of the legislation. *[Schedule #, item 26, section 19(2A) of the Commonwealth Grants Commission Act 1973]*

Amendments to the Competition and Consumer Act 2010

1.21 Section 4B of the *Competition and Consumer Act 2010*, which provides a definition of ‘consumer’, is amended to provide that it has the same meaning as in section 3 of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010*. A consequential amendment to section 56AI(4) has also been made. *[Schedule #, items 30 and 31, sections 4B and 56AI(4) of the Competition and Consumer Act 2010]*

1.22 This amendment will ensure that the meaning of ‘consumer’ remains consistent with the definition in the Australian Consumer Law.

1.23 Section 90(7)(a) of the *Competition and Consumer Act 2010* allows the Commission, if satisfied in all circumstances, to authorise conduct that would not, or is unlikely to, substantially lessen competition. Section 90(8) sets out specific provisions for which section 90(7)(a) does not apply. Section 90(7)(a) does not apply to the extent of excluded conduct in an application to authorise conduct.

1.24 Section 90(8) is amended to clarify that section 90(7)(a) will not apply if the conduct for which authorisation is sought includes cartel conduct, secondary boycott conduct, conduct within sections 45E or 45EA or resale price maintenance. This removes ambiguity about whether section 90(7)(a) applies to individual types of conduct within an application. *[Schedule #, item 32, section 90(8) of the Competition and Consumer Act 2010]*

1.25 Section 154G(1)(d) of the *Competition and Consumer Act 2010* is amended to bring the Australian Competition and Consumer Commission’s powers into line with new technological arrangements by allowing officers to operate electronic equipment at a business premises to determine whether evidential material is accessible, whether the data is

held at the premises or not (for example on cloud based servers). [Schedule #, item 33, section 154G(1)(d) of the Competition and Consumer Act 2010]

1.26 Section 154V(3) of the *Competition and Consumer Act 2010* is amended to correct a grammatical error in the section heading by substituting the word ‘Affect’ with ‘Effect’. [Schedule #, item 34, section 154V(3) of the *Competition and Consumer Act 2010*]

1.27 Sections 260 and 268 of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* are amended to clarify the operation of law in relation to consumer guarantees. It clarifies that multiple failures to comply with the Australian Consumer Law consumer guarantees can amount to a major failure. [Schedule #, item 35 to 38, sections 260 and 268 of Schedule 2 of the *Competition and Consumer Act 2010*]

1.28 The amendment adds an additional threshold test to both the definitions of major failure in sections 260 and 268. The additional threshold test makes it clear that a failure to comply with a relevant consumer guarantee will be a major failure:

- if it is one of a series of failures; and
- a reasonable consumer would not have acquired the good or service at the time of supply if they were aware of the nature and extent of the failures to comply with the consumer guarantees, taken as a whole.

1.29 These amendments apply in relation to goods and services supplied under a contract entered into on or after the day Schedule # commences. [Schedule # item 39, section 303 in Schedule 2 to the *Competition and Consumer Act 2010*]

Amendments to the Corporations Act 2001

1.30 Section 9 of the *Corporations Act 2001* incorrectly cross-references to the definition of ‘Commission delegate’ in the *Australian Securities and Investments Commission Act 2001*. The *Australian Securities and Investments Commission Act 2001* does not have a definition of ‘Commission delegate’. The correct reference is to the definition of ‘ASIC delegate’ in the *Australian Securities and Investments Commission Act 2001*. The *Corporations Act 2001* is updated to reference the definition of ‘ASIC delegate’ in the *Australian Securities and Investments Commission Act 2001*. Consequential amendments have also been made to section 106 and section 1315(1)(b) to refer to ‘ASIC delegate’ rather than ‘Commission delegate’. [Schedule #, items 40, 41, 43, 44, 50 and 110, sections 9, 106 and 1315(1)(b) of the *Corporations Act 2001*]

1.31 Paragraph (c) of the definition of ‘professional investor’ in section 9 of the *Corporations Act 2001* refers to ‘a body registered under the *Financial Corporations Act 1974*’. The *Financial Corporations Act 1974* was repealed in 2001 by the *Financial Sector (Collection of Data—*

Consequential and Transitional Provisions) Act 2001. This amendment fixes this incorrect cross-reference by substituting a new paragraph (c) that refers to ‘a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*’, which is the current Act. [Schedule #, item 42, section 9 of the *Corporations Act 2001*]

1.32 Sections 761EA(10)(b) and 985M(6)(b) of the *Corporations Act 2001* currently state have a reference to the *Legislative Instruments Act 2003*. The *Legislative Instrument Act 2003* has been replaced by the *Legislation Act 2003*. The amendments correct the citations to the short title of the *Legislation Act 2003*. [Schedule #, item 45 and 47, sections 761EA(10)(b) and 985M(6)(b) of the *Corporations Act 2001*]

1.33 Section 850B(2) of the *Corporations Act 2001* is amended to refer to section 42 of the *Legislation Act 2003*, instead of Part 5 of the *Legislative Instruments Act 2003*. The *Legislative Instrument Act 2003* has been replaced by the *Legislation Act 2003*, therefore, the amendment corrects the citation to the short title of the *Legislation Act 2003* and a cross-reference [Schedule #, item 46, section 850B(2) of the *Corporations Act 2001*]

1.34 Section 1017BB(5AA) is amended to make a technical correction by placing the heading ‘*Definitions*’ in its correct position. Currently, section 1017BB(5AA) contains civil penalty provisions. Section 1017BB(6) contains the definitions for that section, therefore, the heading was intended to be with that subsection rather than section 1017BB(5AA). [Schedule #, items 48 and 49, sections 1017BB(5AA) and 1017BB(6) of the *Corporations Act 2001*]

1.35 Technical amendments are made to the table in section 1317E(3). The amendments reflect current Commonwealth drafting practice to use a lower case letter for the first letter in the word ‘subsection’, rather than a capital letter. [Schedule #, items 51, 52, 53, and 54, section 1317E(3) of the *Corporations Act 2001*]

1.36 Technical amendments are made to paragraphs 32(1)(a) to (j) in Schedule 4 to the *Corporations Act 2001* by adding a semi-colon at the end of those paragraphs for consistency with current Commonwealth drafting practice. [Schedule #, item 55, sections 32(1)(a) to (j) in Schedule 4 to the *Corporations Act 2001*]

Amendments to the Life Insurance Act 1995

1.37 Section 200(2)(b) of the *Life Insurance Act 1995* is amended to remove the requirement of physical endorsement of the assignment of a life insurance policy and to enable endorsement by electronic means. Physical endorsement of the assignment of life insurance policy is no longer required given technological changes. [Schedule #, item 56, section 200(2)(b) of the *Life Insurance Act 1995*]

1.38 These amendments apply in relation to a policy issued before, on or after the commencement of Part 1 of this Schedule. [Schedule #, item 137(1)]

1.39 Sections 211(1)(b) and 212(1)(b) of the *Life Insurance Act 1995* are amended to increase the threshold for payments without probate from \$50,000 to \$100,000. The increase in the threshold recognises the original amounts are no longer sufficient given the effect of inflation. [Schedule #, item 57, sections 211(1)(b) and 212(1)(b) of the *Life Insurance Act 1995*]

1.40 Section 213(7) of the *Life Insurance Act 1995* is amended to increase the prescribed amount from \$25,000 to \$50,000. Section 213 allows an insurance company to make a life insured a policy owner, if the original policy owner has died, and the life insured satisfies the company that they would be entitled to the policy proceeds under the original policy owner's will or probate rules. Previously, the policy amount would need to be less than the prescribed amount of \$25,000. This will now be increased to \$50,000. The increase in the threshold recognises the original prescribed amount is no longer sufficient given the effect of inflation. [Schedule #, item 58, section 213(7) of the *Life Insurance Act 1995*]

Amendments to the National Consumer Credit Protection Act 2009

1.41 Section 167(3)(d) of the *National Consumer Credit Protection Act 2009* has been amended to correct a grammatical error. The item omits 'court in foreign country' and substitutes it with 'court in a foreign country'. [Schedule #, item 59, section 167(3)(d) of the *National Consumer Credit Protection Act 2009*]

1.42 In section 194(3), (4) and (5) in Schedule 1 to the *National Consumer Credit Protection Act 2009*, "etc" is updated to "etc.", consistent with current Commonwealth drafting practice. [Schedule #, item 60, sections 194(3), (4) and (5) in Schedule 1 to the *National Consumer Credit Protection Act 2009*]

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

1.43 Subitem 4(2) of Schedule 8 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* is amended to correct a citation error. The subitem has been amended to refer to the *National Consumer Credit Protection Act 2009*, rather of the *National Consumer and Credit Protection Act 2009* (without italics). [Schedule #, item 61, subitem 4(2) of Schedule 8 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*]

Amendments to the Superannuation Guarantee (Administration) Act 1992

1.44 Section 23(12) of the *Superannuation Guarantee (Administration) Act 1992* is amended to clarify that the ordinary time

earnings base is only reduced by an amount of excluded salary or wages if that amount has been included as part of the ordinary time earnings base. This is to ensure that the ordinary time earnings base cannot be reduced by an amount of excluded salary or wages that is not otherwise included in the base. *[Schedule #, item 62, section 23(12) of the Superannuation Guarantee (Administration) Act 1992]*

1.45 Section 26(1) of the *Superannuation Guarantee (Administration) Act 1992* is also amended to clarify that the only time a period is not to be counted as a period of employment as a result of that section is only when the amounts paid to an employee in that period are excluded salary or wages. This is to ensure that a period over which an employee receives salary or wages that are not excluded is still counted as a period of employment, irrespective of whether the employee receives excluded salary or wages over that same period. An employee's period of employment is relevant in working out a reduction of charge percentage in relation to defined benefit superannuation schemes under section 22. *[Schedule #, item 63, section 26(1) of the Superannuation Guarantee (Administration) Act 1992]*

1.46 Section 27(2) of the *Superannuation Guarantee (Administration) Act 1992* is amended to extend its application to amounts that remain after excluding any salary or wages under section 27(1). This ensures that any remaining amount that is less than \$450 in a calendar month is also considered excluded salary or wages for the purpose of calculating individual superannuation guarantee shortfalls. *[Schedule #, item 64, section 27(2) of the Superannuation Guarantee (Administration) Act 1992]*

Amendments to the Superannuation Industry (Supervision) Act 1993

1.47 The MySuper charging rules in section 29VA(9) of the *Superannuation Industry (Supervision) Act 1993* have been amended to allow the trustee of a fund who offers a MySuper product to charge a greater number of differentiated investments fees to the different subclasses of members who hold the MySuper product. *[Schedule #, items 65 to 69, definition of 'lifecycle exception' in section 10, sections 29TC and 29VA of the Superannuation Industry (Supervision) Act 1993]*

1.48 Currently, the governing rules of a superannuation fund are restricted to identifying no more than four different age cohorts in relation to which different investment fees can be charged under section 29VA(9). This is despite the fact that section 29TC(2) permits funds to use 'lifecycle' differentiated products to stream gains and losses to a greater number of subclasses of members who hold a MySuper product, provided that those subclasses are based on age and other prescribed factors.

1.49 The amendments update section 29VA(9) to allow different investment fees to be charged to each subclasses of members that a fund is permitted to stream different gains and losses to. This allows investment

fees charged by a fund to a MySuper member to be based on the actual investment activity undertaken for that subclass of member, instead of all subclasses having to be categorised into one of up to four age cohorts.

1.50 Consistent with the existing requirement in section 29VA(9)(d), any such costs must continue to be attributed between subclasses on a fair and reasonable basis.

1.51 The amendments apply to fees relating to MySuper products during a period that begins on or after the amendments commence. This ensures that the new charging rules only begin to apply from the start of a period over which fees are charged, rather than midway through such a period. *[Schedule #, subitem 137(2)]*

1.52 Sections 68AAA, 68AAB, 68AAC of the *Superannuation Industry (Supervision) Act 1993* have been amended to allow elections regarding the provision of insurance under sections 68AAA, 68AAB and 68AAC of that Act to remain in force.

1.53 Under the current legislation, when undergoing successor fund transfers as part of an internal restructure of merging funds, trustees are unable to rely on elections or notifications made by members to one trustee when the members are transferred to a new trustee.

1.54 The amends allow the provisions to be relied upon by a trustee of the successor fund as an election given to the trustee of the successor fund following a successor fund transfer. The election continues in force through a chain of successor fund transfers. *[Schedule #, items 70 to 72, sections 68AAA(2A), 68AAB(3A), and 68AAC(3A) of the Superannuation Industry (Supervision) Act 1993]*

1.55 Elections made, including elections deemed to be made, under the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* and the *Treasury Laws Amendment (Putting Members' Interests First) Act 2019* are captured by the amendments. These earlier elections remain in force and can be relied upon by a trustee of the successor fund.

1.56 The definition of 'member or beneficiary report' in section 105(3)(a) of the *Superannuation Industry (Supervision) Act 1993* is amended to omit the reference to *Superannuation (Excluded Funds) Taxation Act 1987*, as this is now outdated. This reference will be replaced with the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*, which is the relevant legislation currently in force. *[Schedule #, item 73, the definition of 'member or beneficiary report' in section 105(3)s of the Superannuation Industry (Supervision) Act 1993]*

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

1.57 Section 20QA(1)(a)(ix) of the *Superannuation Unclaimed Money and Lost Member Act 1999* is amended to provide that an account is not an ‘inactive low balance account’ if the member has elected to maintain insurance on that account under section 68AAB(2) of the *Superannuation Industry (Supervision) Act 1993*. [Schedule #, item 74, section 20QA(1)(a)(ix) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*]

1.58 The amendment to section 20QA(1)(a) provides that an account for a member who is under 25 years old is not an ‘inactive low balance account’ if the member has elected to maintain insurance cover under section 68AAC(2) of the *Superannuation Industry (Supervision) Act 1993*. [Schedule #, item 75, section 20QA(1)(a) of *Superannuation (Unclaimed Money and Lost Members) Act 1999*]

1.59 These amendments apply retrospectively from 1 April 2020. This is to ensure that the balance in an account which a member has elected to maintain an insurance cover is not paid to the Commissioner of Taxation from the date when the new circumstances in *Treasury Laws Amendment (Putting Members’ Interests First) Act 2019* apply. The retrospective application of these amendments do not disadvantage anyone and ensures that the law operated as intended. [Schedule #, item 137(3)]

Amendments to the Tax Agent Services Act 2009

1.60 Sections 20-5(1)(c), (2)(d) and (3)(e) of the *Tax Agent Services Act 2009* provide respectively for an individual, partnership or company to be eligible to be registered as an agent or adviser under that Act if the individual, partnership or company maintains, or will be able to maintain, professional indemnity insurance that meets the boards requirements.

1.61 This eligibility criterion is amended to clarify that, on an application for the renewal of an existing registration, the individual, partnership or company must already maintain such professional indemnity insurance at the time of applying for the renewal in order to be eligible for registration. [Schedule #, items 76, 77 and 78, section 20-5 of the *Tax Agent Services Act 2009*]

1.62 This amendment will apply to any application for renewal that has not yet been decided, whether made before, on or after the commencement of the amendment. [Schedule #, item 137(4)]

1.63 An application for renewal of a registration for an agent or adviser under the *Tax Agent Services Act 2009* may currently be made at least 30 days before the day on which the registration expires (with late applications able to be allowed by the Board). This application period is amended to provide that applications must be made at least 30 days, but

no more than 90 days, before the expiry of the registration (with early or late applications able to be allowed by the Board).

1.64 An application may currently be made to the Administrative Appeals Tribunal to review a decision of the Board not to allow a late application. A consequential amendment to this provision will allow applications to be made to the Tribunal to also review a decision of the Board not to allow an early application. *[Schedule #, items 79, 80 and 84, sections 20-50(1) and 70-10(d) of the Tax Agent Services Act 2009]*

1.65 This amendment will apply to any application for renewal that has not yet been decided, whether made before, on or after the commencement of the amendment. *[Schedule #, item 137(4)]*

1.66 Section 20-50(2) of the *Tax Agent Services Act 2009* currently provides that where a tax practitioner has applied to the Tax Practitioners Board to renew their registration, their registration is taken to continue until that application has been decided.

1.67 Section 20-50(2) of the *Tax Agent Services Act 2009* is amended to provide that a practitioner's registration is taken to continue until a decision is made or the practitioner withdraws it, whichever occurs first. *[Schedule #, item 81, section 20-50(2) of the Tax Agent Services Act 2009]*

1.68 This amendment does not alter the fundamental or substantive operation of the law but rather provides clarity about the circumstances in which a tax practitioner can continue to act while their application to renew their registration is being processed.

1.69 Sections 40-5, 40-10 and 40-15 of the *Tax Agent Services Act 2009* allows the registration of tax agents, BAS agents and tax (financial) advisers to be terminated. Currently the Tax Practitioner's Board must terminate a registration if it has been surrendered unless the Board considers that, due to a current investigation or the outcome of an investigation, it would be inappropriate to do so.

1.70 Amendments have been made to sections 40-5, 40-10 and 40-15 of the *Tax Agent Services Act 2009* to include an additional limb that allows the Tax Practitioner's Board not to terminate a registration on a surrender notice. The amendments provide that the Tax Practitioner's Board is not required to terminate a registration on a surrender notice if the Board starts an investigation within 30 days after receiving the surrender notice. *[Schedule #, item 83, sections 40-5(3)(b), 40-10(2A)(b) and 40-15(2A)(b) of the Tax Agent Services Act 2009]*

1.71 The amendments give the Tax Practitioner's Board 30 days to commence an investigation should one be warranted before being required to terminate a registration. This will ensure that a tax agent, BAS agent or tax (financial) adviser cannot frustrate a potential investigation by seeking termination of their registration first.

1.72 New Subdivision 70-F is being inserted into the *Tax Agent Services Act 2009* to provide for how documents may be given to entities under that Act. Under these provisions, entities will nominate physical, postal or electronic addresses for the service of notices under that Act, and then how service may be given in each case (including to companies in liquidation or administration). These provisions are similar to provisions in Division 195 of the *Australian Charities and Not-for-profits Commission Act 2012*. [Schedule #, item 85, sections 70-60 and 70-65 of the *Tax Agent Services Act 2009*]

1.73 These provisions will apply in any case where documents are required to be given under the *Tax Agent Services Act 2009*, including where notices are given by the Board. For example, this will include where the Board notifies an applicant of the decision on an application for registration, or where the Board notifies an entity that an investigation of the entity has commenced.

1.74 A consequential amendment has been made to require agents and advisers registered under the *Tax Agent Services Act 2009* to notify the Board if there is a change in an address for service previously given to the Board. [Schedule #, item 82, section 30-35 of the *Tax Agent Services Act 2009*]

Amendments to the Taxation Administration Act 1953

1.75 Part IVC of the *Taxation Administration Act 1953* provides a framework for how a taxpayer may seek review of an Australian Taxation Office decision, for example, in relation to an assessment of tax or a private ruling. It allows a taxpayer to object against the decision, and where they are dissatisfied with the Commissioner's objection decision, allows them to seek review of that decision in either the Administrative Appeals Tribunal or the Federal Court.

1.76 Under Part IVC, as currently drafted, the ability for a dissatisfied taxpayer to object against a relevant decision must be provided for in an Act (including the provision as applied by another Act) or in regulations relating to taxation. The ability to specify the availability of review under Part IVC is not extended to any other decisions made under other legislative instruments, such as guidelines or rules.

1.77 The amendment made to section 14ZL of the *Taxation Administration Act 1953* broadens the types of law that can allow a dissatisfied taxpayer to seek review of a decision under Part IVC to include legislative instruments. [Schedule #, item 86, section 14ZL of the *Taxation Administration Act 1953*]

1.78 The current limitation in section 14ZL to regulations, reflects the fact that regulations were the only significant kind of legislative instrument under the tax law when Part IVC was introduced. The

amendment allows for all legislative instruments relating to taxation to provide for review, under the Part IVC framework.

1.79 Section 284-75(4)(b)(iii) of Schedule 1 to the *Taxation Administration Act 1953* is amended to correct a technical error. This amendment ensures that the administrative penalty covered by that provision correctly applies in relation to false or misleading statements made by the *recipient* of an offshore supply of low value goods, as originally intended.

1.80 Section 284-75(4) imposes administrative penalties for making certain false or misleading statements, relating to taxation laws, to persons other than the Commissioner of Taxation or entities exercising powers or performing functions under taxation laws. That provision, through subparagraph (4)(b)(iii), imposes a penalty for making a false or misleading statement as to whether a supply is connected with the indirect tax zone for the purposes of goods and services tax law because of Subdivision 84-C of the *A New Tax System (Goods and Services Tax) Act 1999*.

1.81 Subdivision 84-C results in the imposition of goods and services tax on certain supplies of low value goods imported into Australia. It does this by providing that an offshore supply of low value goods is connected with the indirect tax zone if the recipient of the supply is a consumer of the supply.

1.82 Section 284-75(4)(b)(iii) of Schedule 1 to the *Taxation Administration Act 1953* is intended to ensure that a recipient of an offshore supply of low value goods does not misrepresent facts leading a supplier to falsely believe that the supply is *not* connected with the indirect tax zone, and therefore not subject to goods and services tax.

1.83 However, section 284-75(4)(b)(iii) refers to ‘a supply made by you’. A supply is made *to* the recipient of a supply, rather than *by* the recipient of the supply. This amendment corrects this technical error in the provision, to ensure the penalty applies to false or misleading statements made by the recipient of the supply. [*Schedule #, item 87, section 284-75(4)(b)(iii) of Schedule 1 to the Taxation Administration Act 1953*]

1.84 Subdivision 396-C of Schedule 1 to the *Taxation Administration Act 1953* requires Australian Financial Institutions to give the Commissioner certain information about accounts of foreign residents, based on the Common Reporting Standard. The Common Reporting Standard is an Organisation for Economic Co-operation and Development (OECD) standard.

1.85 Currently, self-managed superannuation funds and small superannuation funds are excluded from these reporting requirements as Non-Reporting Financial Institutions. This amendment will remove this exclusion, but will introduce an equivalent exclusion for the accounts of

these funds. Following the amendments, self-managed superannuation fund accounts and small superannuation fund accounts will be excluded from the report will be excluded from these reporting requirements as Excluded Accounts.

1.86 This amendment is not intended to substantively alter the reporting requirements in respect of these funds. This is a technical amendment, intended to ensure consistency of these provisions with the Common Reporting Standard. [*Schedule #, items 88 and 89, sections 396-115(1)(a) and (3)(aa) and (ab) of Schedule 1 to the Taxation Administration Act 1953*]

1.87 Subdivision 396-C of Schedule 1 to the *Taxation Administration Act 1953* requires Australian Financial Institutions to give the Commissioner certain information about accounts of foreign residents, based on the Common Reporting Standard. The Common Reporting Standard is an OECD standard.

1.88 Section 396-130(1) is an anti-avoidance provision for this Subdivision, which enables the Commissioner to require an entity to treat an account as a Reportable Account where a transaction or arrangement has been made for the purpose, or the dominant purpose, of causing the account not to be a Reportable Account. Currently, this anti-avoidance provision only applies to transactions and arrangements made by the Reporting Financial Institution or the Account Holder.

1.89 This anti-avoidance provision is being amended to cover transactions and arrangements made by intermediaries of those parties, or by any other entity. This amendment will ensure a broad application of this anti-avoidance provision, as envisaged by the Common Reporting Standard. [*Schedule #, item 90, section 396-130(1)(d) of Schedule 1 to the Taxation Administration Act 1953*]

Repeal of redundant legislation

1.90 The following amending Acts within the Treasury portfolio are repealed:

- *Bills of Exchange Act 1971*
- *Census and Statistics Act 1920*
- *Census and Statistics Act 1930*
- *Commonwealth Grants Commission Act 1976*
- *Commonwealth Inscribed Stock Act 1913*
- *Excise Act 1962*
- *Income Tax Assessment Act (No. 2) 1969*
- *Income Tax (International Agreements) Act 1960*

- *International Finance Corporations Act 1961*
- *International Finance Corporation Act 1963*
- *International Finance Corporation Act 1966*
- *Sales Tax Assessment Act (No. 1A) 1930*
- *Sales Tax (Exemptions and Classifications) Act 1960*
- *States Grants (Coal Mining Industry Long Service Leave) Act 1961*
- *States Grants (Coal Mining Industry Long Service Leave) Act 1968*
- *States Grants (Petroleum Products) Act 1969*
- *States Grants (Petroleum Products) Act (No. 2) 1965*
- *Trade Practices Act 1975*

[Schedule #, item 91]

1.91 This amendment repeals legislation that is no longer operational.

Part 2 – Amendments commencing first day of the next quarter

Amendments to the Income Tax Assessment Act 1997

1.92 A consequential amendment has been made to table item 1.5 in section 40-10 of the *Income Tax Assessment Act 1997* as a result of amendments made by the *Treasury Laws Amendment (Supporting Australian Farmers) Act 2018*, which amended the tax law to allow fodder storage assets to be deducted immediately instead of over three years. The amendment ensure the table item correctly reflects that fodder storage assets can be deducted immediately. This amendment does not affect the operation of the law as section 40-10 is an outline that summarises the provisions in Division 40 and is not operative. [Schedule #, item 92, section 40-10 of the *Income Tax Assessment Act 1997*]

1.93 Section 116-30 of the *Income Tax Assessment Act 1997* has been amended to ensure that the market value substitution rule does not prevent the intended operation of the non-arm's length income rules in Subdivision 295-H.

1.94 The non-arm's length income rules compare an entity's actual income with the income that would be consistent with an arm's length dealing. This comparison could be substantially frustrated if the market value substitution rule replaced the capital proceeds from a CGT event with the relevant market value because in most situations the market value would be close to the proceeds in an arm's length dealing.

1.95 The amendment provides that the capital proceeds from a CGT event should not be replaced with market value of the CGT asset if the proceeds exceed the market value and they are not received at arm's length. [*Schedule #, item 93, section 116-30(2B) of the Income Tax Assessment Act 1997*]

1.96 This amendment applies to income years starting on or after the day after the Bill receives the Royal Assent. [*Schedule #, item 138(1)*]

1.97 Section 118-320 of the *Income Tax Assessment Act 1997* has been amended to ensure that the non-arm's length income rules in subdivision 295-H operate as intended in relation to segregated current pension assets to discourage shifting of amounts into the superannuation environment through non-arm's length transactions.

1.98 The non-arm's length income rules in section 295-550 apply to ordinary income or statutory income. However, if a complying superannuation entity has a capital gain from a CGT event happening in relation to a segregated current pension asset, section 118-320 causes the capital gain to be disregarded. Thus, there is no amount of statutory income corresponding to the potential capital gain to which the non-arm's length income rules could apply.

1.99 The amendment provides that non-arm's length capital gains are not disregarded. This means that they remain statutory income and the non-arm's length income rules can apply to them (with taxation at the highest marginal tax rate discouraging the non-arm's length transfer of assets into the superannuation environment). [*Schedule #, items 94 and 95, section 118-320 of the Income Tax Assessment Act 1997*]

1.100 The amendment applies to income years starting on or after the day after the Bill receives the Royal Assent. [*Schedule #, item 138(2)*]

1.101 Section 230-365 of the *Income Tax Assessment Act 1997* is amended to align its language with that in the updated accounting standard for hedge effectiveness (AASB 9). AASB 9 refers to "hedge effectiveness requirements" while the earlier standard (AASB 139) required an expectation that the hedge will be "highly effective". The amendment removes the word "highly" from section 230-365 to ensure consistency with the new accounting standard. [*Schedule #, item 96, section 230-365 of the Income Tax Assessment Act 1997*]

1.102 These amendments apply for the purposes of determining whether the requirement of section 230-365 of the *Income Tax Assessment Act 1997* is met in relation to a hedging financial arrangement on or after 1 January 2021 (regardless of whether an entity started to have hedging financial arrangements before, on or after day day). [*Schedule #, item 138(3)*]

1.103 Section 295-495 of the *Income Tax Assessment Act 1997* is amended to confirm that a superannuation fund or RSA provider cannot

claim a deduction for a payment to a person under an income stream because of the person's temporary inability to engage in gainful employment. This is intended to clarify that the law operates with the same result both before and after the *Tax Laws Amendment (Simplified Superannuation) Act 2007* repealed provisions from the *Income Tax Assessment Act 1936* and re-enacted those provisions into the *Income Tax Assessment Act 1997*. This amendment has no effect on the operation of section 295-740 of the *Income Tax Assessment Act 1997*.

1.104 Prior to their repeal by the *Tax Laws Amendment (Simplified Superannuation) Act 2007*, sections 280, 287 and 299E of the *Income Tax Assessment Act 1936* excluded the ability to deduct amounts in respect of benefits (including the temporary benefits referred to in the previous paragraph). Section 295-495 of the *Income Tax Assessment Act 1997* was inserted to re-enact provisions of the *Income Tax Assessment Act 1936* including sections 280, 287 and 299E.

1.105 As indicated by the explanatory memorandum to the Tax Laws Amendment (Simplified Superannuation) Bill 2006, that Bill was not intended to change the law as it operated prior to the re-enactment of those provisions. However, due to items 1 to 3 of the table in section 295-495 applying to 'superannuation benefits', those items currently do not cover a payment to a person under an income stream because of the person's temporary inability to engage in gainful employment (as was covered by the repealed sections). This is due to the exclusion of these payments from being superannuation benefits by section 307-10(a) of the *Income Tax Assessment Act 1997*.

1.106 This amendment inserts a new item into the table in section 295-495 of the *Income Tax Assessment Act 1997* to prevent a deduction from being claimed for payments of these temporary benefits. This ensures that the law operates in the same way both before and after the *Tax Laws Amendment (Simplified Superannuation) Act 2007* amendments. For this reason, this amendment applies in relation to the 2007-2008 income year and later years. This is the same income year from which the *Tax Laws Amendment (Simplified Superannuation) Act 2007* amendments applied (see subitem 2(1) of Schedule 1 to that Act). [Schedule #, items 97 and 138(4), item 6 of the table in section 295-495 of the *Income Tax Assessment Act 1997*]

1.107 The circumstances in which a superannuation provider is entitled to a tax offset for no-TFN contributions income under Subdivision 295-J of the *Income Tax Assessment Act 1997* have been extended.

1.108 Currently, the tax offset is only available to the superannuation provider that had previously paid tax on no-TFN contributions in relation to an individual member. The offset is the amount of the tax that was paid in the three income years preceding the income year in which the individual first quotes their TFN to the superannuation provider. Where a

member is transferred to another superannuation provider because of a successor fund transfer, the new provider is currently not entitled to a tax offset for tax paid by the original provider.

1.109 The amendments allow a superannuation provider that is a successor fund to another superannuation provider (the original provider) to claim the tax offset in an income year for no-TFN tax previously paid by the original provider in certain circumstances. The circumstances are where the original provider paid tax in any of the previous three income years for an amount of no-TFN contributions income of an individual, the individual had never quoted their tax file number to the earlier fund, and has quoted it to the successor fund for the first time in the income year. [*Schedule #, item 99, section 295-675 of the Income Tax Assessment Act 1997*]

1.110 These requirements are consistent with the existing conditions for a superannuation provider being entitled to the tax offset, but adapted to reflect that there has been a successor fund transfer. The changes ensure that the successor fund is entitled to the same tax offset that the original provider would have been entitled to in relation to a member that is transferred between the providers because of successor fund transfer. As with superannuation providers that currently receive the tax offset, the general obligations applicable to superannuation providers require the benefit of the offset be allocated to the relevant member on a fair and reasonable basis.

1.111 The amendments provide two sets of eligibility conditions that are separately applicable to superannuation providers that are superannuation funds and RSA providers. This reflects that the tax offset is applicable to both superannuation funds and RSA providers. The term ‘superannuation provider’ and ‘successor fund’ are existing defined terms in section 995-1(1) of *Income Tax Assessment Act 1997* that apply to superannuation funds and RSA providers.

1.112 The amendments re-write the conditions for the existing tax offset and re-insert the existing note to the provisions. These changes are necessary to restructure the provision to accommodate the new eligibility conditions. These changes do not alter the scope or operation of the existing provisions. [*Schedule #, item 98 and 99, note to section 295-675(1) and section 295-675(3)*]

1.113 The amendments apply from the 2020-21 income year, meaning that superannuation providers that are a successor fund who have a TFN quoted for the first time in the 2020-21 income year are able to claim the tax offset for tax paid by an original provider from the 2017-18 income year. [*Schedule #, item 138(5)*]

1.114 Column 2 of table item 5 in section 307-5(1) of the *Income Tax Assessment Act 1997* is amended to include superannuation amounts paid by the Commissioner of Taxation under sections 24NA(2), (3) or (4) of

the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in the “unclaimed money payment” benefit type. This ensures that such payments are non-assessable non-exempt income under section 306-5 of the *Income Tax Assessment Act 1997*. [Schedule #, item 100, column 2, table item 5 in section 307-5(1) of the *Income Tax Assessment Act 1997*]

1.115 Various amendments to the *Income Tax Assessment Act 1997* have been made to ensure superannuation benefits which are payments by the Commissioner of Taxation under sections 24NA(2), (3) or (4) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* consist of the appropriate tax free component and taxable component. The amendments also ensure that the taxable component of such superannuation benefits consists of the appropriate element taxed in the fund and element untaxed in the fund. [Schedule #, items 101 to 106, sections 307-120, 307-142 and 307-300 of the *Income Tax Assessment Act 1997*]

1.116 These amendments apply from 13 March 2019 as this was when section 24NA was inserted into the *Superannuation (Unclaimed Money and Lost Members) Act 1999* by the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019*. The retrospective application of these amendments do not disadvantage anyone and ensures that the relevant law operated as intended. [Schedule #, item 138(6)]

1.117 The Arts Minister may now delegate their powers under six provisions in Division 376 of the *Income Tax Assessment Act 1997* to the Secretary, an SES employee or acting SES employee in the Department administered by the Arts Minister. The powers to be delegated are:

- the issue of a certificate and the determination of qualifying Australian production expenditure for the location offset (sections 376-20 and 376-30);
- the issue of a certificate and the determination of qualifying Australian production expenditure for the PDV offset (sections 376-45 and 376-50); and
- the corresponding powers to refuse and revoke such certificates (sections 376-235 and 376-245).

[Schedule #, item 107, section 376-247 of the *Income Tax Assessment Act 1997*]

1.118 Section 820-935(3) of the *Income Tax Assessment Act 1997* is amended to add the United Kingdom to the list of foreign jurisdictions within the provision. This amendment ensures that, following the withdrawal of the United Kingdom from the European Union, the United Kingdom’s accounting standards for the preparation of financial statements continue to be recognised for the purposes of the thin capitalisation worldwide gearing debt test. [Schedule #, item 108, section 820-935(3)(aa) of the *Income Tax Assessment Act 1997*]

1.119 This amendment applies in relation to financial statements prepared before or after the commencement of Schedule #. This ensures there is no period of time in which the United Kingdom’s accounting standards are *not* recognised for the purposes of the thin capitalisation worldwide gearing debt test. [Schedule #, item 138(7)]

1.120 An incorrect reference in section 830-15 of the *Income Tax Assessment Act 1997* has been corrected. The provision formerly referred to ‘former subsection 485AA(1) of the *Income Tax Assessment Act 1936*’. The corrected reference is ‘former subsection 485AA(2) of the *Income Tax Assessment Act 1936*.’ [Schedule #, item 109, section 830-15 of the *Income Tax Assessment Act 1997*]

Part 3 – Amendments with other commencements

Amendments to the Corporations Act 2001

1.121 Section 163(4) of the *Corporations Act 2001* is amended to require that a change of identity application lodged by a corporation must meet any requirements of the data standard. [Schedule #, item 111, section 163(3) of the *Corporations Act 2001*]

1.122 Section 346A(1A) of the *Corporations Act 2001* is repealed to reflect that ASIC may comply with its obligations to give an extract of particulars electronically without the need for an agreement under section 352(1). [Schedule #, item 112, section 346A(1A) of the *Corporations Act 2001*]

1.123 Section 446A of the *Corporations Act 2001* is amended to enable notices of a deemed resolution to be lodged with the Registrar and must comply with the data standards. [Schedule #, items 113 and 114, section 446(5)(a) and 446A(8) of the *Corporations Act 2001*]

1.124 Section 491(2)(a) of the *Corporations Act 2001* is amended to provide that notices of a resolution under section 491(2)(a) are lodged with the Registrar. Further amendments to section 491 ensures the notice must meet the data standards. [Schedule #, items 115 and 116, sections 491(2)(a) and 491(3) of the *Corporations Act 2001*]

1.125 Section 1653(4), which is to be inserted into the *Corporations Act 2001* on the commencement of Schedule 2 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*, is amended to correct an incorrect cross-reference to reference section 1272C(2)(a)(ii) rather than section 1272C(2)(b). [Schedule #, item 119, section 1653(4) of the *Corporations Act 2001*]

1.126 The amendments commence at the same time as the relevant items in the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*.

1.127 A punctuation error in section 994F(5)(b) of the *Corporations Act 2001* has been corrected by replacing a full stop in the middle of the provision with a comma. Section 994F(5) will be inserted into the *Corporations Act 2001* when Schedule 1 to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* commences. This amendment will commence immediately after that commencement. [Schedule #, item 117, section 994F(5)(b) of the *Corporations Act 2001*]

1.128 A consequential amendment to section 1053A(d) of the *Corporations Act 2001* is made as a result of amendments made by the *Civil Law and Justice Legislation Amendment Act 2018*, which renumbered section 90MZB of the *Family Law Act 1975* as section 90XZB. The consequential amendment ensures that section 1053A(d) of the *Corporations Act 2001* reflects the renumbered provision and that therefore eligible persons listed in section 90XZB of the *Family Law Act 1975* are able to make superannuation complaints under the Australian Financial Complaints Authority scheme. [Schedule #, item 118, section 1053A(d) of the *Corporations Act 2001*]

1.129 There is a further consequential amendment to section 1053A(d) of the *Corporations Act 2001* as a result of amendments to be made by the Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019. [Schedule #, item 118, section 1053A(d) of the *Corporations Act 2001*]

1.130 The Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019 implements a referral of powers from Western Australia by introducing Part VIIC in the *Family Law Act 1975*, which applies specifically to Western Australian de facto couples who wish to split their superannuation interests. Part VIIC is broadly equivalent to Part VIIB of the *Family Law Act 1975*, which contains superannuation splitting provisions that apply to married and de facto couples in other jurisdictions.

1.131 The consequential amendment ensures that section 1053A(d) of the *Corporations Act 2001* includes a reference to section 90YZR of the *Family Law Act 1975* (which is the provision applying for Western Australian de facto couples, equivalent to section 90XZB that applies for other jurisdictions). This ensures that Western Australian de facto couples who are ‘eligible persons’ within the meaning of section 90YZR of the *Family Law Act 1975* are able to make superannuation complaints under the Australian Financial Complaints Authority scheme in the same circumstances as married and de facto couples in other jurisdictions.

Amendments to the Superannuation Industry (Supervision) Act 1993

1.132 A number of amendments have been made to sections 126A, 344 and 345 to ensure that the Registrar is able to review decisions.

[Schedule #, items 120 to 134, sections 126A, 344 and 345 of the Superannuation Industry (Supervision) Act 1993]

1.133 The amendments commence at the same time as the relevant item in Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*.

Amendments to the Taxation Administration Act 1953

1.134 Section 269-50 in Schedule 1 to the *Taxation Administration Act 1953* is amended to remove the reference to ASIC and replace it with the Registrar. ***[Schedule #, item 135, section 269-50 of the Taxation Administration Act 1953]***

1.135 The amendments commence at the same time as the relevant item in Schedule 1 to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*.