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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (MISCELLANEOUS AND TECHNICAL
AMENDMENTS) BILL 2022

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

<i>Abbreviation</i>	<i>Definition</i>
ACCC	Australian Competition and Consumer Commission
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
Bill	<i>Treasury Laws Amendment (Miscellaneous and Technical Amendments) Bill 2022</i>
CCIV	Corporate Collective Investment Vehicle
FHSSS	First home super saver scheme
GST	Goods and services tax
MIS	Managed Investment Scheme

Chapter 1: *Miscellaneous and technical amendments*

Outline of chapter

- 1.1 Schedule 1 makes a number of miscellaneous and technical amendments to Treasury portfolio legislation. The amendments demonstrate the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.
- 1.2 The amendments correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes.

Context of amendments

- 1.3 Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes. The amendments are part of the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.
- 1.4 The miscellaneous and technical amendments 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 legislation. The miscellaneous and technical amendments process has since been expanded to all Treasury portfolio legislation.

Summary of new law

- 1.5 The amendments maintain and improve the quality of Treasury legislation by:
 - correcting typographical and numbering errors;
 - fixing incorrect legislative references;
 - reducing unnecessary red tape;
 - addressing unintended outcomes;
 - adopting modern drafting practices;
 - enhancing readability and administrative efficiency;

- repealing redundant and inoperative provisions; and
- making other technical changes.

Detailed explanation of new law

Part 1 – Amendments commencing the day after Royal Assent

Division 1 – Foreign ownership register notices

- 1.6 Various provisions in Part 7A of the *Foreign Acquisitions and Takeovers Act 1975* inappropriately refer to ‘notice’ instead of ‘register notice’. ‘Register notice’ is defined in section 4 of that Act as a notice given under a provision of Division 3 of Part 7A of that Act.
- 1.7 Relevant provisions in Part 7A of the *Foreign Acquisitions and Takeovers Act 1975* are amended to ensure they correctly refer to ‘register notice’.
[Schedule 1, items 1 to 9, sections 130ZI, 130ZO, 130ZP, 130ZR, 130ZS and 130ZT of the Foreign Acquisitions and Takeovers Act 1975]
- 1.8 Section 130ZU of the *Foreign Acquisitions and Takeovers Act 1975* allows for regulations to be made prescribing circumstances in which register notices must be given to the Registrar. Paragraph 130ZU(1)(c) of that Act inappropriately refers to circumstances relating to ‘a foreign person’. The policy intention is that there should be sufficient flexibility for regulations to be made in relation to all persons and not only foreign persons.
- 1.9 The word ‘foreign’ from the paragraph is omitted from paragraph 130ZU(1)(c) of the *Foreign Acquisitions and Takeovers Act 1975*. The amendment ensures that there is no ambiguity that regulations made under section 130ZU can apply to all relevant persons.
[Schedule 1, item 10, section 130ZU of the Foreign Acquisitions and Takeovers Act 1975]

Division 2 – Infringement notices

- 1.10 Under the *Corporations Act 2001*, a person may make a request to ASIC to remove an infringement notice. ASIC must consider the request, make a decision, and inform the applicant of the decision within 14 days.
- 1.11 Paragraph 1317DAT(5)(a) of the *Corporations Act 2001* inadvertently replicates paragraph 1317DAS(4)(a) of that Act and incorrectly deals with ASIC refusing to allow the amount payable under an infringement notice to be paid in instalments. It is intended that subsection 1317DAT(5) of the *Corporations Act 2001* provide that if ASIC does not make a decision within 14 days, then it is taken to have refused the request to withdraw an infringement notice.
- 1.12 Paragraph 1317DAT(5)(a) of the *Corporations Act 2001* is amended to provide that where no decision is made by ASIC regarding a request to withdraw an

infringement notice, then it is taken to have refused the request.

[Schedule 1, item 11, section 1317DAT of the Corporations Act 2001]

- 1.13 The amendment applies in relation to representations made to ASIC on or after the commencement of the amendment, whether the related infringement notice was given before, on or after that commencement.

[Schedule 1, item 12, section 1693 of the Corporations Act 2001]

Division 3 – Motor vehicle service and repair information scheme adviser

- 1.14 Part IVE of the *Competition and Consumer Act 2010* establishes the motor vehicles service and repair information sharing scheme. The scheme mandates that all service and repair information provided to car dealership networks and manufacturer preferred repairers be made available for independent repairer and registered training organisations.

- 1.15 The scheme also establishes the role of a scheme adviser, whose functions include facilitating dispute resolution, the sharing of information about the scheme and reporting to the ACCC and the Minister about the operation of the scheme. Section 57FA of the *Competition and Consumer Act 2010* provides for the establishment and appointment of the scheme adviser.

- 1.16 The amendments clarify that the appointment of a scheme adviser is not limited to a natural person and may extend to a body corporate. The amendments also clarify that the appointed scheme adviser is not entitled to receive payment of any kind in relation to their appointment.

[Schedule 1, items 13 and 14, section 57FA of the Competition and Consumer Act 2010]

- 1.17 The amendments apply in relation to appointments that take effect on or after 1 July 2022.

[Schedule 1, item 15]

Division 4 – Fringe Benefits technical amendment

- 1.18 Section 37 of the *Fringe Benefits Tax Assessment Act 1986* sets out the ‘otherwise deductible’ rule for employers who provide board fringe benefits, where the recipient of the benefit is an employee of the employer.

- 1.19 In paragraphs 37(b) and (c) of the *Fringe Benefits Tax Assessment Act 1986*, the word ‘under’ is inadvertently omitted. In both places, the text should read ‘...would...have been allowable to the recipient under section 8-1 of the *Income Tax Assessment Act 1997*...’.

- 1.20 The amendment corrects these errors by inserting the word ‘under’ before ‘section 8-1 of the *Income Tax Assessment Act 1997*’ in both locations.

[Schedule 1, item 16, section 37 of the Fringe Benefits Tax Assessment Act 1986]

Division 5 – Disclosure of protected information

- 1.21 The *Commonwealth Registers Act 2020* was introduced to create a new Commonwealth business registry regime. Amendments were also made to the

Business Names Registration Act 2011, Corporations Act 2001 and National Consumer Credit Protection Act 2009 to facilitate the regime.

- 1.22 The regime provides that it is an offence for a person to disclose protected information obtained by the person in the course of their official employment. However, the *Commonwealth Registers Act 2020* does not specify that the offence is only intended to apply to the disclosure of protected information.
- 1.23 The amendment clarifies that the offence only applies to the disclosure of protected information, ensuring consistency with similar provisions in the Commonwealth business registry regime legislative framework.
[Schedule 1, item 17, section 17 of the Commonwealth Registers Act 2020]

Division 6 – Giving TFNs under corporations legislation

- 1.24 The director identification number initiative is part of the Modernising Business Registers program under the Digital Business Plan. The initiative requires directors of companies to apply for and hold an identification number provided by the Registrar.
- 1.25 Currently, when a person applies for a director identification number, the Registrar may request, but not compel, that person to provide their tax file number. If the person consents, the tax file number must be provided in writing.

The requirement to provide tax file numbers in writing to the Registrar is removed, allowing this information to be collected through non-written means such as electronic communication. This change increases regulator flexibility and helps modernise the relevant legislation.

[Schedule 1, items 18 and 19, section 308-5 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006; Schedule 1, items 20 and 21, section 1272 of the Corporations Act 2001]

- 1.26 An application for a director identification number must meet any requirements of a data standard made by the Registrar under section 1270G of the *Corporations Act 2001* (or section 13 of the *Commonwealth Registers Act 2020* for the purposes of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*).

Division 7 – Consumers

- 1.27 Amendments to section 4B of the *Competition and Consumer Act 2010* made by the *Treasury Laws Amendment (2020 Measures No .6) Act 2020* inadvertently removed a presumption provided in that section.
- 1.28 The presumption provides that for any proceeding under, or in respect of a matter arising under the *Competition and Consumer Act 2010*, a person is presumed to be a consumer in relation to particular goods or services, unless the contrary is established.
- 1.29 The amendments reinstate the presumption and align the definition of consumer under section 3 of the *Competition and Consumer Act 2010* with that in the Australian Consumer Law in Schedule 2 to that Act.

[Schedule 1, items 22 to 24, sections 4B and 56AI of the Competition and Consumer Act 2010]

Division 8 – Giving notices under the Superannuation Industry (Supervision) Act 1993

- 1.30 The *Superannuation Industry (Supervision) Act 1993* previously required regulators to publish a notice in the Gazette when they make decisions in relation to the disqualification, confirmation, revocation or variation of a person acting in certain capacities.
- 1.31 The *Superannuation Industry (Supervision) Act 1993* also allowed the regulator, by notice published in the Gazette, to extend the lodgement period for a specified class of filled-up survey forms.
- 1.32 The amendments update the *Superannuation Industry (Supervision) Act 1993* to ensure that notices of relevant decisions are published by notifiable instrument instead by notice in the Gazette. This change is consistent with modern drafting practice to use notifiable instruments to issue notices of decisions.

[Schedule 1, items 25 to 42, sections 126A, 126H, 130D, 130F, 131 and 347A of the Superannuation Industry (Supervision) Act 1993]

Division 9 – Declarations for fringe benefits tax assessment

- 1.33 Persons who are recipients of certain fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* are required to give their employer a declaration. The declaration must purport to set out ‘particulars of the car’ (among other things). The declaration supports a reduction of the taxable value of:
- fringe benefits in respect of overseas employment holiday transport (see section 61A of that Act);
 - certain expense payment fringe benefits in respect of relocation transport (see section 61B of that Act);
 - certain expense payment fringe benefits in respect of employment interviews or selection tests (see section 61E of that Act); or
 - certain expense payment fringe benefits associated with work-related medical examinations, medical screenings, preventative health care or counselling or migrant language training (see section 61F of that Act).
- 1.34 The amendments remove the reference to ‘particulars of the car’ as a requirement to be set out in a declaration. It is no longer necessary for the Commissioner of Taxation to obtain this information to administer the relevant provisions.
- [Schedule 1, item 43 to 48, sections 61A, 61B, 61E and 61F of the Fringe Benefits Tax Assessment Act 1986]**

Division 10 – Cross reference update

- 1.35 Table item 24 of the table in subsection 6(1) of the *Superannuation Industry (Supervision) Act 1993* references regulators who are responsible for the administration of section 64A of that Act.
- 1.36 The *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018* repealed section 64A of that Act, meaning table item 24 is now redundant. Accordingly, table item 24 is repealed.
[Schedule 1, item 49, table item 24 of the table in subsection 6(1) of the *Superannuation Industry (Supervision) Act 1993*]

Division 11 – Exempt core Part 3 actions

- 1.37 Section 4 of the *Foreign Acquisitions and Takeovers Act 1975*, defines ‘core Part 3 action’ as an action taken by a foreign person which is:
- a significant action;
 - a notifiable national security action;
 - an action where the Treasurer has given the person a notice that the action may pose a national security concern; or
 - a reviewable national security action that is notified to the Treasurer.

These actions are further defined under Divisions 2, 4A and 4B of Part 2 of that Act.

- 1.38 Foreign persons may apply to the Treasurer for various types of exemption certificates under Division 5 of Part 2 of the *Foreign Acquisitions and Takeovers Act 1975*. An exemption certificate specifies an interest of a kind that, if acquired by the foreign person, does not give rise to a significant action, notifiable action, notifiable national security action, or reviewable national security action.
- 1.39 Paragraphs 3.84 to 3.97 of the explanatory memorandum to the *Foreign Investment Reform (Protecting Australia’s National Security) Bill 2020* makes clear that the policy intent is for foreign persons to be required to notify the Treasurer of certain events and be liable for penalty provisions, even if they have been issued with an exemption certificate.

The amendments clarify that core Part 3 actions taken under an exemption certificate are still captured by the relevant penalty provisions. The amendments insert a new definition of an exempt core Part 3 action into section 4 of the *Foreign Acquisitions and Takeovers Act 1975* and amend the civil penalties at sections 98B, 98D, 98E and 101AA of that Act to expressly include exempt core Part 3 actions where applicable.

[Schedule 1, items 50 to 59, sections 4, 98B, 98D, 98E and 101AA of the *Foreign Acquisitions and Takeovers Act 1975*]

Division 12 – Application provisions relating to financial advisers

- 1.40 Transitional provisions inserted by the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* were intended to more clearly set out, but not modify, the timeframes in which an existing provider must meet the education and training standards, or the courses approved by the Minister.
- 1.41 Existing providers who passed the financial adviser exam by the exam cut-off date (1 January 2022, or 1 October 2022 for existing providers eligible for the exam extension) have until 1 January 2026 to meet the education and training standards or the courses approved by the Minister while remaining authorised to provide personal advice to retail clients in relation to relevant financial products.
- 1.42 Additionally, consistent with previous transitional provisions, it was intended that existing providers who ceased to be relevant providers before the relevant exam cut-off date would also have until 1 January 2026 to meet the education and training standards or the courses approved by the Minister. To be reauthorised before this date, a person would need to pass the financial adviser exam.
- 1.43 However, the transitional provisions did not achieve this outcome.
- 1.44 Section 1684D of the *Corporations Act 2001* is amended to make clear that existing providers who do not pass the financial adviser exam by the relevant exam cut-off date and who ceased to be a relevant provider before the relevant exam cut off date:
- are eligible to be re-authorised to provide personal advice once they pass the exam; and
 - have until 1 January 2026 to meet the education requirements or courses approved by the Minister.

[Schedule 1, items 60 to 62, section 1684D of the Corporations Act 2001]

- 1.45 From 1 January 2026, these advisers (existing providers who ceased to be relevant providers before the relevant exam cut-off date) will need to pass the exam and meet the education requirements or courses approved by the Minister before they can be authorised to provide personal advice to retail clients in relation to relevant financial products. If the existing provider was not a relevant provider on 1 January 2026, they will not need to meet the work and training related standards to be able to be authorised.
- 1.46 From 1 January 2026, all existing providers will need to have passed the exam and met the education requirements to be authorised to provide personal advice to retail clients in relation to relevant financial products.

Division 13 – Renumbering

- 1.47 The *Australian Securities and Investment Commission Act 2001* contains numbering errors that incorrectly duplicate references to Part 29 and section 325 of that Act. The duplicate Part and section were inserted into that

Act by Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2019 Measures) Act 2020*.

Amendments correct the referencing errors by renumbering Part 29 and section 325 and updating a reference to Part 29 in item 10 of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020*.

[Schedule 1, items 63 to 65, Part 29 and section 325 of the Australian Securities and Investments Commission Act 2001]

Division 14 – Virtual RSE annual members’ meetings

1.48 The *Superannuation Industry (Supervision) Act 1993* is amended to clarify that the licensee of a registrable superannuation entity can use technology to hold annual members’ meetings.

1.49 The licensee may hold an annual members’ meeting:

- at one or more physical venues (a physical meeting);
- at one or more physical venues using virtual meeting technology (a hybrid meeting); or
- using virtual meeting technology only (a wholly virtual meeting).

[Schedule 1, item 67, section 29P of the Superannuation Industry (Supervision) Act 1993]

1.50 Virtual meeting technology has the same meaning as in the *Corporations Act 2001*, which is defined as any technology that allows a person to participate in a meeting without being physically present at the meeting.

[Schedule 1, item 66, section 10 of the Superannuation Industry (Supervision) Act 1993]

1.51 All persons who attend the annual members’ meeting (whether at a physical venue or by using virtual meeting technology) are taken to be present at the meeting.

[Schedule 1, item 68, section 29P of the Superannuation Industry (Supervision) Act 1993]

1.52 The new sections also set out:

- the place and deemed time for different types of annual members’ meetings; and
- changes to notice requirements for different types of annual members’ meetings.

[Schedule 1, item 68, section 29P of the Superannuation Industry (Supervision) Act 1993]

These rules are summarised in Tables 1 and 2 below.

Table 1: Place and deemed time of different types of meetings

Type of meeting	Place of meeting	Time of meeting
Physical meeting or hybrid meeting	Physical venue for the meeting or, if there is more than one physical venue, the main venue as set out in the meeting notice	Time at the physical venue or main physical venue
Wholly virtual meeting	Registered address of, or address for service of notices on, the registrable superannuation entity	Time at the registered address of, or address for service of notices on, the entity

Table 2: Notice requirements for different types of meetings

Type of meeting	Notice requirements
Physical meeting (one location at which to physically attend)	The date, time and place of the meeting
Physical meeting (more than one location at which to physically attend)	The date and time for the meeting at each location, and the main location for the meeting
Hybrid meeting (one location at which to physically attend)	The date, time and place of the meeting Sufficient information to allow persons to participate in the meeting by means of the technology
Hybrid meeting (more than one location at which to physically attend)	The date and time for the meeting at each location, and the main location for the meeting Sufficient information to allow persons to participate in the meeting by means of the technology
Wholly virtual meeting	Sufficient information to allow persons to participate in the meeting by means of the technology

- 1.53 If the annual members' meeting is a wholly virtual meeting, the place at which the meeting is held is taken to be the registered address of, or an address for services of notices on, the registrable superannuation entity as contained in a register kept by APRA under regulations made for the purposes of subsection 353(2) of the *Superannuation Industry (Supervision) Act 1993*. Under Part 11A of the *Superannuation Industry (Supervision) Regulations 1994*, a registrable superannuation entity must provide APRA with either the registered address of the entity or an address for service of notices on the entity (i.e., a single

address). The address should not be a P.O. Box.

[Schedule 1, item 68, section 29P of the Superannuation Industry (Supervision) Act 1993]

- 1.54 The amendments to the *Superannuation Industry (Supervision) Act 1993* apply in relation to an annual members' meeting of a registrable superannuation entity that ends on or after the day that Schedule 1 commences.
[Schedule 1, item 69]

Division 15 – Repeal of redundant appropriation

- 1.55 Schedule 3 to the *Treasury Laws Amendment (North Queensland Flood Relief) Act 2019* provided an appropriation from the Consolidated Revenue Fund to provide 'urgent' assistance to north Queensland after the flooding in 2019. The appropriation was never used and is now redundant.
- 1.56 The amendment updates the *Treasury Laws Amendment (North Queensland Flood Relief) Act 2019* by repealing the redundant special appropriation contained in Schedule 3 to that Act.
[Schedule 1, item 70, Schedule 3 to the Treasury Laws Amendment (North Queensland Flood Recovery) Act 2019]

Division 16 – Corporate collective investment vehicle technical amendments

- 1.57 The corporate collective investment vehicle or CCIV regime commenced 1 July 2022. The CCIV regime (see Chapter 8B of the *Corporations Act 2001*) provides a new corporate structure alternative for funds management in Australia, in addition to the existing trust-based MIS regime (see Chapter 5C of the *Corporations Act 2001*).
- 1.58 A CCIV is a new type of company limited by shares. It is an umbrella vehicle that is comprised of one or more sub-funds. Different sub-funds within a CCIV may offer investors a different investment strategy. The CCIV is a legal entity; its sub-funds are not separate legal entities.
- 1.59 The CCIV regime allows a retail CCIV with only one sub-fund to be listed on a prescribed market and allows individual CCIVs to choose whether to *list the CCIV itself*, or to *list the sub-fund* on that market. If a retail CCIV has multiple sub-funds, neither the CCIV itself nor any of its sub-funds may be listed on a prescribed market (see section 1222N of the *Corporations Act 2001*).
- 1.60 The *Corporations Act 2001* imposes enhanced disclosure obligations on listed entities, to support market integrity and protect investors – and therefore boost consumer confidence. The existing listing-related obligations also apply to the new CCIV regime, consistent with those obligations currently applying to listed companies and listed management investment schemes. This includes the continuous disclosure requirements under Chapter 6CA of the *Corporations Act 2001*.
- 1.61 Amendments ensure that the current listing-related obligations apply appropriately to the new CCIV regime. This ensures that the same disclosure obligations apply, irrespective of whether the CCIV itself or the sub-fund is listed. The CCIV (as the legal entity) remains responsible for complying with

all legislative requirements, including the continuous disclosure requirements, irrespective of whether the CCIV itself or the sub-fund is listed.

[Schedule 1, items 71 to 73, sections 9, 111AE and 793C of the Corporations Act 2001]

- 1.62 The amendments commence the day after Royal Assent. They apply to all listed sub-funds, irrespective of whether the sub-fund was listed before, on or after that commencement.

[Schedule 1, item 74, section 1694 of the Corporations Act 2001]

Division 17 – Recognised tax advisers

- 1.63 The *Financial Sector Reform (Hayne Royal Commission Response – Better Advice) Act 2021* repealed the definition of ‘a registered tax agent, BAS agent or tax (financial) adviser’ in subsection 90-1(1) of the *Tax Agent Services Act 2009*, effective from 1 January 2022. This term is also defined in section 995-1 of the *Income Tax Assessment Act 1997* (as having the meaning given by subsection 90-1(1) of the *Tax Agent Services Act 2009*).
- 1.64 ‘A registered tax agent, BAS agent or tax (financial) adviser’ currently forms part of the broader term ‘recognised tax adviser’ in section 995-1 of the *Income Tax Assessment Act 1997*. ‘Recognised tax adviser’ is also referenced in both paragraph 25-5(2)(e) and subsection 110-35(2) of the *Income Tax Assessment Act 1997*.
- 1.65 Paragraph 25-5(2)(e) denies a deduction for fees or commission paid for advice about the operation of a Commonwealth law relating to taxation, unless that advice is provided by a ‘recognised tax adviser’. Subsection 110-35(2) excludes from CGT cost base calculations remuneration paid for particular services, other than professional advice about the operation of a taxation law that is provided by a ‘recognised tax adviser’.
- 1.66 As a result of the definition in subsection 90-1(1) of the *Tax Agent Services Act 2009* being repealed, amounts incurred by taxpayers from 1 January 2022 for the purposes of obtaining certain taxation advice may not be deductible under paragraph 25-5(2)(e) or included in cost base calculations under 110-35(2) of the *Income Tax Assessment Act 1997*.
- 1.67 The Bill amends relevant definitions in section 995-1 of the *Income Tax Assessment Act 1997* to address the referencing issues and ensure the deductions and cost base calculations operate as intended
[Schedule 1, items 75 and 76, section 995-1 of the Income Tax Assessment Act 1997]
- 1.68 To ensure continuity in the operation of paragraph 25-5(2)(e) and subsection 110-35(2) of the *Income Tax Assessment Act 1997*, the amendments apply in relation to advice provided on or after 1 January 2022.
[Schedule 1, item 77]

Division 18 – Reference Checking and Information Sharing Protocol

- 1.69 Division 18 amends the *National Consumer Credit Protection Act 2009* and the *Corporations Act 2001* to ensure the Reference Checking and Information Sharing Protocol operates as intended.
- 1.70 Australian financial services licensees and Australian credit licensees are required to comply with a Reference Checking and Information Sharing Protocol made by ASIC in the form of a legislative instrument. Australian financial services licensees and Australian credit licensees are required to conduct reference checking and information sharing in relation to individuals to whom the protocol applies, that is a licensee, or former or current authorised representative – either by requesting information about the individual or providing information about the individual, as the case may be.
- 1.71 Contrary to the policy intention, mortgage intermediaries such as aggregators, who are also Australian credit licensees, may not have been required to comply with the Reference Checking and Information Sharing Protocol in certain circumstances under the previous legislative framework. In practice, aggregators often work closely with other Australian credit licensees under service agreements. Accordingly, aggregators often hold information about activities of other Australian credit licensees and their authorised credit representatives that would be relevant for information sharing under the Protocol.
- 1.72 The amendments ensure aggregators are appropriately subject to the Reference Checking and Information Sharing Protocol, in the same way Australian credit licensees and Australian financial service licensees will continue to be subject to the Protocol. The amendments also ensure there is consistent practice throughout the mortgage brokering industry, and that employment information will be available about financial advisers and mortgage brokers where appropriate and in line with the policy intention. As part of the ongoing stewardship of Treasury portfolio legislation, the amendments ensure the relevant legislation is well structured and achieves its policy intention.
[Schedule 1, items 78 to 94, sections 910A, 912A and 1695 of the Corporations Act 2001, sections 5 and 47 of the National Consumer Credit Protection Act 2009, and the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]
- 1.73 The Reference Checking and Information Sharing Protocol currently made under the *National Consumer Credit Protection Act 2009* and the *Corporations Act 2001* continues to be in force.

Division 19 – Disclosure documents for offers in a MIS

- 1.74 Following the *Financial Services Reform Act 2001*, disclosures of interests in certain kinds of MIS are now made under Product Disclosure Statements in accordance with Chapter 7 (rather than a disclosure document under Chapter 6) of the *Corporations Act 2001*. Where appropriate, Chapter 7 also provides exemptions from Product Disclosure Statements requirements in relation to MIS.

- 1.75 The amendments remove several redundant references to MIS in Chapter 6D to the *Corporations Act 2001*.
[Schedule 1, items 95 to 102, sections 708, 710, 711 and 720 of the Corporations Act 2001]

Part 2 – Amendments commencing first day of next quarter

Division 1 – Asterisking

- 1.76 In common with other Acts, the *A New Tax System (Goods and Services Tax) Act 1999* uses asterisking to identify defined terms. Division 3 in Part 1-2 of that Act explains that most defined terms in that Act are identified by an asterisk appearing at the start of the term (e.g., ‘*enterprise’).
- 1.77 The amendments insert an asterisk before three instances of the word ‘registration’ and one instance of the word ‘register’ that had been missing an asterisk. This change is consistent with the following rules in the Office of Parliamentary Counsel’s drafting directions, in this case applied to the defined term ‘registered’:
- the first occurrence of each defined term in each subsection should be asterisked; and
 - different grammatical forms of a defined term have a corresponding meaning to the defined term (see section 18A of the *Acts Interpretation Act 1901*) and should be asterisked accordingly.
- [Schedule 1, items 103 to 106, sections 25-5, 25-55, 25-57 and 63-35 of the A New Tax System (Goods and Services Tax) Act 1999]**
- 1.78 The amendments also remove asterisks from the definitions of ‘decreasing adjustment’ and ‘increasing adjustment’ in the guide material in the *A New Tax System (Goods and Services Tax) Act 1999*. This change is consistent with the rule in the Office of Parliamentary Counsel’s drafting directions that asterisks are not used in non-operative or guide material. The third column in the table within the definitions of decreasing and increasing adjustment is a guide in helping the reader know the subject matter of the listed provision. The listing of the provision in the second column of the table is the operative part within each definition.
- [Schedule 1, items 107 and 108, section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999]**

Division 2 – Equal representation rules

- 1.79 Section 117 of the *Superannuation Industry (Supervision) Act 1993* sets out the circumstances in which a trustee of a standard employer-sponsored fund may pay an amount to a standard employer-sponsor. Prior to the amendments, this generally involved the trustee passing a resolution and the group of trustees or board of directors (as the case may be) had to consist of an equal split between employer representatives and member representatives.

- 1.80 The former prescriptive drafting in section 117 *Superannuation Industry (Supervision) Act 1993* inadvertently did not account for all governance structures permitted under Part 9 of that Act (Part 9 sets out the equal representation rules).
- 1.81 Section 117 of *Superannuation Industry (Supervision) Act 1993* is amended to ensure it captures all governance structures permitted under Part 9 of that Act. **[Schedule 1, items 109-111, section 117 of the Superannuation Industry (Supervision) Act 1993]**

Division 3 – Registration requirements for GST

- 1.82 Under the *A New Tax System (Goods and Services Tax) Act 1999*, the supplier of goods or services is ordinarily liable to pay the relevant GST on that supply. There are some exceptions to this general rule.
- 1.83 For certain supplies made through an electronic distribution platform, the operator of that platform (rather than the supplier) is liable to pay GST on that supply (see section 84-55 of the *A New Tax System (Goods and Services Tax) Act 1999*). This rule applies to electronic supplies referred to as ‘inbound intangible consumer supply’ (see 84-65 of the *A New Tax System (Goods and Services Tax) Act 1999*) and other supplies referred to as ‘offshore supply of low value goods’ (see sections 84-77 and 84-81 of the GST Act).
- 1.84 Where such supplies are made through multiple platforms, the operators of those platforms can enter a written agreement to specify which operator is to be treated as the supplier and hence liable to pay the GST on that supply (see paragraph 84-55(2)(a) of the *A New Tax System (Goods and Services Tax) Act 1999*).
- 1.85 These items amend the GST Act to ensure that the platform operator chosen to be treated as the supplier under these circumstances must be registered for GST purposes. That is, platform operators which are not registered, but are required to be registered, cannot enter an agreement to be treated as the supplier under 84-55(2)(a). This amendment supports the integrity of the GST system, ensuring that platform operators cannot avoid paying GST by shifting the GST liability to an entity that is not registered for GST purposes. **[Schedule 1, items 112 and 113, section 84-55 of the A New Tax System (Goods and Services Tax) Act 1999]**
- 1.86 The amendments are consistent with an existing (separate) rule, which allows a platform operator and a supplier to enter a written agreement specifying that the platform operator is to be treated as the supplier and hence liable to pay the GST on other certain supplies made through the platform. Under that rule, such arrangements are only permitted where the platform operator is registered for GST purposes (see section 84-60 of the *A New Tax System (Goods and Services Tax) Act 1999*).
- 1.87 The amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after Royal Assent. They apply to supplies made through an electronic distribution platform on or after the commencement of these amendments. **[Schedule 1, item 114]**

Part 3 – Amendments with other commencements

First home super saver scheme technical changes

- 1.88 The first home super saver scheme or FHSSS was introduced as part of the 2017-18 Budget to help reduce pressure on housing affordability. The scheme allows individuals to make voluntary contributions into the superannuation system and to later withdraw those contributions and an amount of associated earnings for the purposes of purchasing or constructing their first home.
- 1.89 Prior to the amendments, the legislation underpinning the FHSSS operated in an inflexible manner. This would occasionally result in some individuals having a poor user experience with the scheme.
- 1.90 In the 2021-22 Budget, the former Government announced four technical changes to the legislation underpinning the FHSSS to improve its operation and users' experience with it. The technical changes involve:
- increasing the discretion of the Commissioner of Taxation to amend and revoke FHSSS applications ('FHSSS applications' refers to a requests for 'first home super saver determinations' under Division 138 of Schedule 1 to the *Taxation Administration Act 1953* or requests for 'release authorities' that relate to first home super saver determinations under Division 131 of Schedule 1 to that Act, as the case may be);
 - allowing individuals to withdraw or amend their FHSSS applications prior to them receiving a FHSSS amount, and allow those who withdraw to re-apply for FHSSS releases in the future;
 - allowing the Commissioner of Taxation to return any FHSSS amounts to superannuation funds, provided the amount has not yet been released to the individual; and
 - clarifying that FHSSS amounts returned by the Commissioner of Taxation to superannuation funds are treated as funds' non-assessable non-exempt income and does not count towards individuals' contribution caps.
- 1.91 Part 3 of Schedule 1 to the Bill makes various amendments to the *Taxation Administration Act 1953* and the *Income Tax Assessment Act 1997* to give effect to the technical changes. The amendments are explained below.
- 1.92 Individuals and the Commissioner of Taxation are generally able to amend or revoke FHSSS applications, provided a FHSSS amount has not already been paid to the individual (under the legislation, a FHSSS amount is effectively considered to be paid to a person if the Commissioner of Taxation has begun the process of paying the amount to person, even though the person may not have received the amount yet). Any amended FHSSS applications must still comply with the underlying criteria and policy intention of the scheme (e.g., persons who now own a home cannot continue progressing FHSSS applications and have a FHSSS amount paid to them).
- [Schedule 1, items 126 to 128 and 130 to 136, sections 131-5, 131-10, 131-12,***

131-30, 138-10, 138-12, 138-13 and 138-15 of Schedule 1 to the Taxation Administration Act 1953]

- 1.93 In certain circumstances, FHSSS amounts paid to the Commissioner of Taxation can be repaid to superannuation funds or the relevant person. This generally occurs where the person's FHSSS application has been amended or revoked and their entitlement to a FHSSS amount has ceased.
[Schedule 1, items 129 and 137, sections 131-80 and 355-65 of Schedule 1 to the Taxation Administration Act 1953]
- 1.94 FHSSS amounts repaid to superannuation funds are not included in funds or persons' assessable income and do not count towards persons' contribution caps.
[Schedule 1, items 115 to 120, sections 306-10, 307-5 and 307-120 of the Income Tax Assessment Act 1997]
- 1.95 In very limited circumstances, the Commissioner of Taxation may be able to repay FHSSS amounts directly to the relevant person or their legal personal representative. These circumstances involve the person satisfying a condition of release with a nil cashing restriction (e.g. the person is at least 65 years old).
[Schedule 1, items 129 and 137, sections 131-80 and 355-65 of Schedule 1 to the Taxation Administration Act 1953]
- 1.96 Repaid FHSSS amounts are afforded the correct status in terms of their tax free and taxable components. This helps ensure that repaid FHSSS amounts are subject to the same taxation treatment as if they had never been released to Commissioner of Taxation under the FHSSS.
[Schedule 1, item 121, section 307-143 of the Income Tax Assessment Act 1997]
- 1.97 Consequential amendments are made to the taxation rules in relation to the FHSSS in Division 313 of the *Income Tax Assessment Act 1997* to ensure they account for the increased flexibility provided by the technical changes.
[Schedule 1, items 122 to 125, sections 313-10, 313-15 and 313-35 of the Income Tax Assessment Act 1997]
- 1.98 The amendments commence on the first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 12 months beginning on the day the Bill receives the Royal Assent. The delayed commencement ensures that the ATO and other stakeholders have sufficient time to adjust systems to administer and comply with the technical changes.
[table item 4 of the table in subsection 2(1) of the Bill]
- 1.99 Consistent with the 2021-22 Budget announcement, the technical changes apply retrospectively to FHSSS applications made from 1 July 2018. This ensures the increased flexibility provided by the amendments can be afforded to past cases.
[Schedule 1, item 138]
- 1.100 A transitional provision ensures that variations or revocations of certain FHSSS applications that occurred before the commencement of the amendments continue to be in force.
[Schedule 1, item 139]