

EXPOSURE DRAFT EXPLANATORY STATEMENT

The purpose of the *Treasury Laws Amendment Instrument 2024: Minor and technical amendments (Spring 2024)* (the Amending Regulations) is to make miscellaneous and technical amendments to regulations in the Treasury portfolio. The amendments demonstrate the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct errors and unintended outcomes, make technical changes, and improve the quality of Treasury portfolio legislation. The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax legislation. It has since been expanded to all Treasury legislation.

The Amending Regulations amend various Treasury portfolio regulations to correct drafting errors and unintended outcomes, repeal inoperative provisions, and make other technical changes.

Details of the Amending Regulations are set out in Attachment A.

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids;
and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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Details of the Treasury Laws Amendment Instrument 2024: Minor and technical amendments (Spring 2024)

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment Instrument 2024: Minor and technical amendments (Spring 2024)* (the Amending Regulations).

Section 2 – Commencement

Part 1 of Schedule 1 to the Amending Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Part 2 of Schedule 1 to the Amending Regulations commences on the first day of the next quarter following Royal Assent.

Section 3 – Authority

The Regulations are made under the *Corporations Act 2001*, *Superannuation Industry (Supervision) Act 1993*, and the *Taxation Administration Act 1953* (collectively, the Authorising Acts).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1

Legislative references below are made to Schedule 1 of the Amending Regulations unless otherwise stated.

Part 1 – Amendments commencing day after registration

Division 1 – Corporations Regulations 2001

Items 1 to 4 of Schedule 1 amend the *Corporations Regulations 2001* (Corporations Regulations) to update outdated references to Northern Territory legislation.

Schedules 8AB and 8AC of the Corporations Regulations prescribe State and Territory laws and provisions for paragraphs 601RAE(4)(a) and 601RAE(4)(b) of the *Corporations Act 2001* (Corporations Act). This includes Northern Territory legislation, where certain legislative references are out of date.

Since the passage of the *Interpretation Legislation Amendment Act 2018* (NT), the relevant references have been outdated, as, prior to the amendments, they do not include the year of enactment for the legislation. These amendments insert the year of enactment for Northern Territory legislation, make minor editorial amendments and replace outdated references.

Item 1 inserts the year of enactment for the *Companies (Trustees and Personal Representatives) Act*, being '1981' into table item 5 of Schedule 8AB of the Corporations Regulations.

Item 2 replaces the outdated reference to the *Adult Guardianship Act (NT)* in table item 14 of Schedule 8AC of the Corporations Regulations, with the *Guardianship of Adults Act 2016 (NT)*.

Item 3 inserts the year of enactment for the *Guardianship of Infants Act*, being '1972' into table item 15 of Schedule 8AC of the Corporations Regulations.

Item 4 replaces the incomplete and unitalicised reference to a Trustee Act (NT) in table item 8 of Schedule 8AE of the Corporations Regulations, with *Trustee Act 1893 (NT)*, Part I.

Division 2 – Conditional offer of goods or services

Items 5 to 8 of Schedule 1 amend the *Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations)* to remove an exemption from section 68A of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*.

Former section 68A of the SIS Act contained the general rule which prohibited the trustee or associate of the trustee of a regulated superannuation fund (Fund) from supplying or offering to supply a good or service to an employer on the condition that their employees will apply to be members of the Fund.

Regulation 13.18A of the SIS Regulations prescribes exemptions from section 68A of the SIS Act. Relevantly, paragraph 13.18A(1)(a) allows a trustee, or associate of the trustee of the Fund to supply a business loan to an employer, on condition that the employer be a member of the Fund and the business loan is on commercial arm's length basis.

Section 68A of the SIS Act was revised by Schedule 9 of the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Act 2019* to prohibit trustees of a Fund from providing goods or services to an employer (or 'treating' an employer) where the action may influence the employer to nominate the fund as a default fund or having one or more of their employees apply or agree to become a member of the Fund. Specifically, the amendments replaced the previous prohibition on the supply or offer to supply being 'conditional on' the employee becoming a member of the Fund, with a lower threshold of 'reasonably expected to influence' an employer's decision to nominate the Fund as the default or encourage their employees to nominate the Fund as their fund of choice.

Item 5 of Schedule 1 omits "(1) For" and substitutes "For the purposes of" in subsection 13.18A(1) of the SIS Regulations, to clarify which provisions the regulations apply to.

Item 6 of Schedule 1 repeals paragraph 13.18A (1)(a) of the SIS Regulations, which allows the Fund to provide a business loan to an employer on a commercial arm's length basis and on the condition that the employer be a member of the fund. This exemption does not align with the revised threshold of reasonably expected to influence in section 68A of the SIS Act.

Further, item 7 of Schedule 1 repeals sub-regulation 13.18A(2) of the SIS Regulations. This sub-regulation outlines an exception to the exemption in paragraph 13.18A (1)(a). That is, loans that are supplied on the condition that a person, other than the person receiving the loan, is a member of the Fund are not exempt from section 68A of the SIS Act. This contemplated scenario will be redundant with the repeal of paragraph 13.18A (1)(a) of the SIS Regulations and would otherwise offend the amended section 68A of the SIS Act.

Item 8 of Schedule 1 provides that the amendments made by this Schedule apply in relation to the provision of goods or services, or the refusal to provide goods or services that occur on or after the commencement.

Division 3 – Trustee-directed products

Item 9 of Schedule 1 amends section 9AB.2 of the SIS Regulations to exclude transition to retirement (TTR) income streams from the meaning of trustee-directed product.

Trustee-directed products, as defined in section 9AB.2 of the SIS Regulations, are subject to the annual superannuation performance test run by the Australian Prudential Regulation Authority (APRA). A superannuation interest that supports a superannuation income stream in the retirement phase is excluded from the trustee directed product definition, and thus, also excluded from the annual superannuation performance test.

APRA has not included TTR products when conducting the annual superannuation performance test to date. This amendment will amend the definition of trustee-directed product to exclude TTR products, which are more similar to a superannuation income stream in the retirement phase, so that the SIS Regulations are aligned with current practice and reflect the policy intent.

Division 4 – Superannuation Industry (Supervision) Regulations 1994

Items 10 to 13 of Schedule 1 repeal a redundant regulation from the SIS Regulations and make consequential amendments.

Item 10 repeals regulation 2.36D of the SIS Regulations.

Regulation 2.36D of the SIS Regulations is a transitional regulation that is no longer applicable. The *Superannuation Industry (Supervision) Amendment Regulations 2002 (No. 5)* amended Regulation 2.36D so it does not apply to funds that elected to operate under the Corporations Act. All funds must operate under the Corporations Act, so the regulation is redundant.

Items 11 to 13 make consequential repeals to cross-references to the regulation 2.36D in paragraphs 7A.11(10)(c), 7A.12(5)(c) and 7A.13(8)(c) of the SIS Regulations.

Part 2 – Amendments commencing first day of next quarter

Division 1 – Shadow Economy Taskforce

Item 14 of Schedule 1 updates the name of a prescribed taskforce.

Section 67 of the *Taxation Administration Regulations 2017* contains a list of prescribed taskforces to whom the disclosure of protected information by taxation officers is allowed. Currently, table item 8 of the table in section 67 lists the ‘Shadow Economy Standing Taskforce’ as a prescribed taskforce. The name for this taskforce is the ‘Shadow Economy Taskforce’.

Item 14 updates the name of the prescribed taskforce at table item 8 of the table in section 67 from ‘Shadow Economy Standing Taskforce’ to ‘Shadow Economy Taskforce’. This change ensures the provisions allowing disclosure of protected information to the taskforce are working as intended.

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