

EXPOSURE DRAFT EXPLANATORY MATERIALS

EXPOSURE DRAFT

## **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 materials for the legislation 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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EXPOSURE DRAFT



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# Glossary

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This Explanatory Memorandum uses the following abbreviations and acronyms.

<b>Abbreviation</b>	<b>Definition</b>
ASIC	Australian Securities and Investments Commission
Bill	TBA
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
Commissioner	Commissioner of Taxation
Excise Act	<i>Excise Act 1901</i>
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
IGT Act	<i>Inspector-General of Taxation Act 2003</i>
IGT	Inspector-General of Taxation
TFN	Tax file number



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# **Chapter 1:        *Miscellaneous and technical amendments***

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## **Outline of chapter**

- 1.1     Schedule # to the Bill makes 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 unintended drafting outcomes, update legislative references, simplify provisions and reduce red tape.

## **Context of amendments**

- 1.3     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.

## **Summary of new law**

- 1.4     Divisions 1 and 2 of Part 1 of Schedule # to the Bill amend the Corporations Act, Division 3 of Part 1 amends the IGT Act; Part 2 amends the GST Act; and Part 3 amends the Excise Act. The miscellaneous and technical amendments maintain and improve the quality of Treasury legislation by:
  - rectifying unintended drafting outcomes;
  - enhancing readability and administrative efficiency;
  - reducing unnecessary red tape; and
  - making other minor technical changes.

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# Detailed explanation of new law

## Part 1 – Amendments commencing day after Royal Assent

### Division 1 – Sustainability reporting

- 1.5 Division 1 of Part 1 of Schedule # to the Bill amends the Corporations Act to clarify and extend the limited immunity provisions to all sustainability reports, whether or not required under the Corporations Act. The amendments rectify an unintended drafting outcome.
- 1.6 Limited immunity provisions in section 1707D of the Corporations Act applies to protected statements in relation to sustainability reports for a limited time. The limited immunity provisions do not prevent criminal proceedings or proceedings brought by ASIC. For example, ASIC may take action for false, misleading or deceptive conduct in relation to protected statements in a sustainability report. These provisions are designed to ensure there is sufficient regulatory oversight and to encourage developing reporting and auditing capabilities during the early stages of the sustainability disclosure regime in Australia.
- 1.7 Sustainability reporting and the related limited immunity provisions were legislated in the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*. Paragraph 4.193 of the explanatory memorandum to the originating Bill explained that the limited immunity provisions intended to apply to all sustainability reports, whether or not required to be prepared. The limited immunity provisions intended to include voluntary reports and any reports prepared as a condition of, or to obtain the benefit of an exemption granted by ASIC (e.g. under sections 340 or 341 of the Corporations Act).
- 1.8 The amendments ensure that the limited immunity provisions apply to sustainability reports even when they are not required under the Corporations Act. To avoid doubt, the amendments do not change the nature and timing of the effect of the limited immunity provisions.
- 1.9 The amendments make an editorial update to the table heading under section 285A of the Corporations Act to improve readability by also including sustainability reports alongside financial reports.  
*[Schedule #, item 1, table heading to table under section 285A of the Corporations Act]*

### Relief condition reports

- 1.10 The amendments provide that, where a report (relief condition report) is prepared under an ASIC order under subsections 340(1) or 341(1) of the Corporations Act, that report is treated as a sustainability report for specific



purposes, which include the limited immunity provisions (section 1707D), ASIC directions (section 296E) and auditing provisions (section 301A).

***[Schedule #, items 2 and 3, sections 342C and 1707DB of the Corporations Act]***

- 1.11 A sustainability report is defined under section 9 of the Corporations Act as an annual report required under subsection 292A.
- 1.12 ASIC has the power, under subsections 340(1) or 341(1) of the Corporations Act to make orders (in writing) to relieve requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4). Under the Corporations Act:
- section 340 of the Corporations Act covers exemption orders on an individual basis, on application by a company, registered scheme, registrable superannuation entity or disclosing entity; and
  - section 341 of the Corporations Act covers exemption orders that apply to a specified class of companies, registered schemes, registrable superannuation entities or disclosing entities.
- 1.13 For example, the *ASIC Corporations (Wholly owned Companies) Instrument 2016/785* is a legislative instrument and an order made under subsection 341(1) of the Corporations Act. The instrument provides relief that exempts a company from their financial reporting obligations if all the conditions of the instrument are met, including that the holding company of the relieved company prepares a consolidated financial statement for the group (which covers the relieved company that would have otherwise been required to prepare a report under Chapter 2M of the Corporations Act).
- 1.14 The amendments create a new type of relief condition reports to ensure that if a similar order also applied to the sustainability reporting obligations of a company, and the holding company of the relieved company prepares a consolidated sustainability report. That document, while not required under section 292A of the Corporations Act, may nevertheless be treated as a sustainability report for specific purposes.
- 1.15 Where ASIC makes an order under subsections 340(1) or 341(1) of the Corporations Act relieving, or having the effect of relieving a company, registered scheme, registrable superannuation entity or disclosing entity from a requirement to prepare a sustainability report for a financial year, that order may also provide for a relief condition report.
- [Schedule #, item 2, subsections 342C(1) and (2) of the Corporations Act]***
- 1.16 An order that has the effect of relieving a company, registered scheme, registrable superannuation entity or disclosing entity of the obligation to prepare a sustainability report would also include an order that provides relief from financial reporting obligations. This is because paragraph 292A(1)(a) of the Corporations Act requires an entity to prepare a sustainability report if they are also required to prepare a financial report for the financial year.
- 1.17 A relief condition report is a document that meets all of the following:

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- is prepared by a company, registered scheme, registrable superannuation entity or disclosing entity (the reporting entity);
  - is covered by the relevant ASIC order (under subsections 340(1) or 341(1) of the Corporations Act) which specifies that the document would be a relief condition report; and
  - contains a director's declaration that it is intended that the document be treated as a sustainability report for the purposes of sections 296E (regarding ASIC directions) and 301A (regarding the audit of the sustainability report).

***[Schedule #, item 2, subsections 342C(4) and (5) of the Corporations Act]***

1.18 A relief condition report is treated as a sustainability report for the purposes of sections 296E (regarding ASIC directions) and 301A (regarding the audit of the sustainability report). Therefore, these reports, similar to sustainability reports required under section 292A of the Corporations Act, are subject to ASIC's direction powers and auditing requirements.

***[Schedule #, item 2, subsection 342C(6) of the Corporations Act]***

1.19 The amendments also extend the application of the limited immunity provisions in 1707D to relief condition reports as covered by the ASIC order if they are prepared within 3 years of the start date under the limited immunity regime. This is because all limited immunity protections under section 1707D of the Corporations Act no longer apply after that period.

***[Schedule #, item 3, subsection 1707DB of the Corporations Act]***

1.20 The limited immunity provisions apply to the relief condition report as if it were sustainability report. The amendments also remove the requirements in subparagraphs 1707D(3)(a)(i) and (4)(a)(i) of the Corporations Act relating to a sustainability standard as the relief condition report may not be prepared for the purpose of complying with a sustainability standard.

***[Schedule #, item 3, subsection 1707DB(5) of the Corporations Act]***

1.21 The extension of limited immunity ensures that, consistent with all other sustainability reports required under section 292A of the Corporations Act, the relief condition reports would benefit from the limited immunity provisions designed to encourage developing reporting and auditing capabilities across industries in the early stages of the sustainability reporting regime in Australia. As this extension only applies where the directors resolve that the document is effectively a relief condition report (that would be treated as a sustainability report for specific purposes), the report is also subject to sufficient ASIC oversight, directions powers and audit requirements.

1.22 To avoid doubt, the amendments do not limit any conditions imposed by ASIC in the exercise of their powers under sections 340 and 341 of the Corporations Act.

## **Voluntary sustainability reports**

1.23 Similarly, the limited immunity provisions in section 1707D of the Corporations Act extend to sustainability reports prepared on a voluntary basis

(e.g. a report not required under section 292A of the Corporations Act and is not a relief condition report).

- 1.24 Under the amendments, a voluntary sustainability report prepared by a company, registered scheme, registrable superannuation entity or disclosing entity would be covered by the limited immunity provisions in section 1707D of the Corporations Act if it meets certain requirements. To be covered by the limited immunity provisions, these reports must be prepared within 3 years starting from the start date of the regime as all limited immunity protections under section 1707D of the Corporations Act no longer apply after that period.
- 1.25 This voluntary sustainability report must be a document that would be a sustainability report within the meaning of section 9 of the Corporations Act, had it been required to be prepared under section 292A. An entity may not be required to prepare a sustainability report for various reasons, including if they do not meet the threshold requirements in section 292A of the Corporations Act.  
***[Schedule #, item 3, paragraph 1707DA(1)(a) and subparagraph 1707DA(1)(b)(i) of the Corporations Act]***
- 1.26 Voluntary sustainability reports covered by the amendments must contain the contents expected in a sustainability report that is required under section 292A of the Corporations Act, including climate statements, any notes to the climate statement and the director's declaration about the statements and notes. The voluntary sustainability report would also include the auditor's report on the report.
- 1.27 Under subsection 1707C of the Corporations Act, sustainability reports (which would also include, under the amendments, voluntary sustainability reports) are expected to meet a different standard for the 3 years starting from the start date, being that the entity has, in the directors' opinion, taken reasonable steps to ensure that the substantive provisions of the sustainability report are in accordance with the Corporations Act.
- 1.28 In addition to the general contents of a sustainability report, the voluntary sustainability report must also contain an additional declaration that the directors intend that section 1707DA of the Corporations Act applies to the report. This requirement would clearly indicate that the document is a voluntary sustainability report, and that it is intended to be treated as a sustainability report for the purposes of sections 296E (regarding ASIC directions), 301A (regarding the audit of the sustainability report) and 1707D (regarding limited immunity).  
***[Schedule #, item 3, subparagraph 1707DA(1)(b)(ii) and subsections 1707DA(2) and (3) of the Corporations Act]***
- 1.29 The extension of limited immunity ensures that, consistent with all other sustainability reports required under section 292A of the Corporations Act, the voluntary sustainability reports would benefit from the limited immunity provisions designed to encourage developing reporting and auditing capabilities across industries in the early stages of the sustainability reporting regime in Australia. This extension also only applies where the directors

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resolve that the document is effectively a voluntary sustainability report (that would be treated as a sustainability report for specific purposes).

- 1.30 Where a company, registered scheme, registrable superannuation entity or disclosing entity prepares a voluntary sustainability report covered by section 1707DA of the Corporations Act, it is a sustainability report for the purposes of sections 296E (regarding ASIC directions), 301A (regarding the audit of annual sustainability reports) and 1707D (regarding limited immunity in new sustainability reporting) of the Corporations Act. This ensures that the relevant voluntary sustainability report is subject to sufficient ASIC oversight where there limited immunity applies.

***[Schedule #, item 3, subsection 1707DA(4) of the Corporations Act]***

- 1.31 The policy intention to protect voluntary sustainability reports is to encourage entities to make climate-related financial disclosures, even if not required to do so under the legislation. Like mandatory disclosures in Chapter 2M of the Corporations Act, voluntary sustainability reports will help provide Australians and investors with greater transparency and more comparable information about an entity's exposure to climate-related financial risks and opportunities and climate-related plans and strategies.
- 1.32 It is expected that voluntary sustainability reports would be prepared by companies that will be required to prepare sustainability reports under section 292A of the Corporations Act in a later year. These companies may wish to provide greater visibility to their shareholders and other interested parties before the legislative requirement applies to them, but they may be unlikely to prepare such a report unless the limited immunity provisions apply equally to their voluntary sustainability reports.

## Division 2 – Notifying ASIC About authorised representatives

- 1.33 Division 2 of Part 1 of Schedule # to the Bill amends the Corporations Act to clarify when ASIC is required to deregister a company that has been wound up. The amendments would streamline the lodgement of deregistration forms regarding winding up by aligning the lodgement requirements between court ordered wind ups and voluntary wind ups, for the same form to be lodged with ASIC (form 5603 'End of administration return', available at the time these explanatory materials are prepared at: <https://asic.gov.au/regulatory-resources/forms/forms-folder/5603-end-of-administration-return/>).
- 1.34 Section 509 of the Corporations Act provides that if an end of administration return for a company is lodged with ASIC on the basis that the affairs of the company are fully wound up, ASIC must deregister the company at the end of the period of 3 months beginning on the day after the return is lodged.
- 1.35 However, there is uncertainty as to whether the section 509 requirement for ASIC to deregister the company within 3 months is triggered by the lodgement of an end of administration form following a court ordered winding up.
- 1.36 The amendments repeal section 509 of the Corporations Act and insert a new section 550 which clarifies that ASIC must deregister a company within three

months of the lodgement of an end of administration return. Section 550 of the Corporations Act applies irrespective of whether an end of administration form is lodged following a court ordered or voluntary winding up.

*[Schedule #, items 6 and 7, section 550 of the Corporations Act]*

- 1.37 The amendments insert a new signpost in section 9 of the Corporations Act to the definition of ‘end of administration return’ to improve the readability of the Corporations Act. The amendments also make consequential and editorial amendments to Treasury portfolio legislation to reflect the above changes.  
*[Schedule #, items 4, 5 and 8 to 11, paragraphs 546-10(1)(c) and (2)(b) of the Corporations (Aboriginal and Torres Strait Islander) Act 2006, subsection 601AC(1), paragraphs 601AC(1)(c) and 1239C(c), and note 2 to subsection 70-6(3) of Schedule 2 of the Corporations Act]*
- 1.38 The amendments apply to an end of administration return that is lodged with ASIC on or after the day after Royal Assent.  
*[Schedule #, item 12, section 1710 of the Corporations Act]*

### Division 3 - Notifying ASIC About authorised representatives

- 1.39 Division 3 of Part 1 of Schedule # to the Bill updates certain notice requirements in the Corporations Act to improve the clarity of the primary legislation.
- 1.40 Subsection 916F(1) of the Corporations Act provides that a person authorising a representative to provide a financial service must notify ASIC within 15 business days of that authorisation. Subsection 916F(3) of the Corporations Act provides that a person that has authorised a representative to provide a financial service must notify ASIC within 10 business days if details about that representative change or their authorisation is revoked.
- 1.41 However, the operation of both subsections 916F(1) and (3) of the Corporations Act are modified by regulation 7.6.04AA of the Corporations Regulations. This regulation extends the timeframes provided for in subsections 916F(1) and (3) to 30 business days instead.
- 1.42 The amendments improve the readability of the Corporations Act by incorporating the effects of the Corporations Regulations by updating subsections 916F(1) and (3) so that the timeframe for meeting the notice requirements in both provisions is 30 business days.  
*[Schedule #, items 13 and 14, subsections 916F(1) and (3) of the Corporations Act]*

### Division 4 – Inspector-General of Taxation Act 2003

- 1.43 Division 4 of Part 1 of Schedule # to the Bill amends the IGT Act to reduce red tape by allowing the IGT to delegate certain powers.
- 1.44 The IGT Act provides the IGT with certain powers in dealing with complaints. These include the power to:

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- decline or discontinue investigations (section 9 of the IGT Act),
  - transfer non-taxation complaints to the Commonwealth Ombudsman (section 10 of the IGT Act),
  - request, record and provide TFNs to the Commissioner for complaint investigations (section 37B of the IGT Act), and
  - receive TFNs from the Commissioner (section 37C of the IGT Act).
- 1.45 Without these amendments, the IGT Act does not empower the IGT to delegate any of these powers. The inability to delegate these powers means that the power must be exercised personally by the IGT. This is administratively onerous and leads to unnecessary delay when dealing with newly lodged complaints.
- 1.46 In the 2023-24 financial year, the IGT received 1,705 complaints and completed 1,193 dispute investigations. The absence of a mechanism to delegate routine investigatory powers to staff also diverts resources from investigating complaints by taxpayers about the administration of taxation laws. These amendments provide that the IGT's powers under sections 9, 10, 37B and 37C of the IGT Act are delegable.
- 1.47 To ensure that powers are exercised by officers with appropriate skills and experience, the amendments only allow the IGTO to delegate powers conferred under section 9, 10 and 37C of the IGT Act to an employee at the Executive Level (EL) or Senior Executive Service (SES).  
***[Schedule #, item 15, subsections 42(1A) and (1B) of the IGT Act]***
- 1.48 Providing the IGT with the power to delegate these functions to EL and SES staff is appropriate, noting the limited degree of discretion provided to a decision-maker particularly under sections 10 and 37C of the IGT Act.
- 1.49 Section 9 of the IGT provides a discretion to not investigate certain complaints. This discretion may only be exercised in limited circumstances, including where the IGT is of the opinion that the complaint is frivolous, vexatious, or if further investigation of the action is not warranted having regard to all the circumstances.
- 1.50 Section 10 of the IGT Act provides for the transfer of complaints to the Commonwealth Ombudsman. A transfer must occur where the complaint, or part of a complaint, made to the IGT is wholly about action other than tax administration action, and unless the Commonwealth Ombudsman advises otherwise.
- 1.51 Section 37C of the IGT Act allows for the receipt of a TFN from the Commissioner when it is received for the purposes of an investigation into a complaint by an entity regarding action that is taken by a tax official and relates to administrative matters under taxation law and is the subject of a complaint by that entity to the IGT.
- 1.52 The amendments also allow the IGT to delegate the power to request a person to quote their TFN and the power to provide the person's TFN to the Commissioner under section 37B of the IGT Act to any officer within the

organisation. Allowing for the delegation to IGT staff at all officer levels would facilitate the lodgement of complaints by telephone, where IGT case officers request a complainant's TFN to assist with the investigation. IGT case officers seek to quote TFNs to the Commissioner when conducting investigations into the complaint to facilitate ready identification of the complainant to allow the matter to be reviewed in a timely manner. It would be administratively burdensome to limit this delegation to EL or SES staff, who do not generally perform case officer functions. The power is also limited as it enables the delegate to request a TFN but does not impose an obligation on the complainant to provide it.

*[Schedule #, item 15, subsection 42(1C) of the IGT Act]*

- 1.53 The IGT may only delegate the power under section 37B of the IGT Act if the IGT is satisfied that the person has appropriate qualifications, training or experience to exercise the power.

*[Schedule #, item 15, subsection 42(1D) of the IGT Act]*

- 1.54 Consequential amendments are also made to ensure the effective operation of the amendments.

*[Schedule #, item 16, subsection 42(2) of the IGT Act]*

- 1.55 These amendments more closely align the delegation powers of the IGT with those of the Commonwealth Ombudsman, as granted under the *Ombudsman Act 1976* which allows the Commonwealth Ombudsman to delegate all powers except those under sections 15, 16, 17, 19 and 20ZJ to provide administrative flexibility.

- 1.56 These amendments to the IGT Act ensure the IGT can use its resources in the most efficient manner possible, while allowing the IGT to delegate the power to perform routine administrative functions.

- 1.57 The amendments apply to delegations made on or after the day after Royal Assent.

*[Schedule #, item 17]*

## Part 2 – Amendments commencing first quarter after Royal Assent

### Division 1 – A New Tax System (Goods and Services Tax) Act 1999

- 1.58 Division 1 of Part 2 of Schedule # to the Bill amends the GST Act to ensure that the supply of disability services funded under the *Disability Services and Inclusion Act 2023* is GST-free.

- 1.59 Section 38-40 of the GST Act provides that the supply of disability services funded by Commonwealth, state and territory governments is GST-free.

- 1.60 The former *Disability Services Act 1986* was repealed and replaced by the *Disability Services and Inclusion Act 2023*, on 1 January 2024. However, the

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reference to the former *Disability Services Act 1986* in section 38-40 of the GST Act was not updated.

- 1.61 The amendments ensure that the supply of disability services funded by Commonwealth, state and territory governments is GST-free. The amendments preserve the treatment of services where the supplier received funding under the former *Disability Services Act 1986* and also applies to services where the supplier received funding under the new *Disability Services and Inclusion Act 2023* on or after its application on 1 January 2024, reflecting the continuation of the existing policy for disability supports and services.  
*[Schedule #, items 18 to 21, section 38-40 and subsection 38-40(2) of the GST Act]*

## Part 3 – Amendments with other commencements

### Division 1 – Excise tariff alterations

- 1.62 Division 1 of Part 3 of Schedule # to the Bill amends the Excise Act to align with similar arrangements in the *Customs Act 1901* regarding tariff proposals.
- 1.63 A tariff proposal is a proposal in Parliament by the government of an excise tariff, or an excise tariff alteration. A tariff proposal can lower or raise duty rates and add, remove or alter the description of goods which are subject to excise duty. However, the tariff proposal must be subsequently ratified by Parliament to remain effective.
- 1.64 Prior to the amendments, if a tariff proposal containing an alteration was proposed when the House of Representatives was not sitting, section 160B of the Excise Act provided for a proposed alteration to be notified in the Commonwealth Gazette as a “Notice of Intention to Propose Excise Tariff Alteration”, and to be done by the ‘CEO’, defined in section 4 of the Excise Act as the Commissioner.
- 1.65 The amendments change the person notifying the tariff proposal from the CEO (the Commissioner) to the Minister. Because the Minister would propose a tariff alteration in Parliament, it is more appropriate for the Minister to notify in the Commonwealth Gazette, rather than the Commissioner. This arrangement aligns with the *Customs Act 1901*.  
*[Schedule #, item 24, subsection 160B(1) of the Excise Act]*
- 1.66 The amendments also requires that the Minister makes a notifiable instrument, rather than notify via publication of a notice in the Commonwealth Gazette. This amendment improves the clarity of the law.  
*[Schedule #, items 25 to 29, subsection 160B(1), paragraphs 160B(1)(a) ( and (b), and subsection 160B(2) of the Excise Act]*
- 1.67 To ensure that a person is able to know the exact time that an instrument under section 160B of the Excise Act is registered, it is intended that the time (including a reference to the time zone) and date of registration of any instrument made under section 160B will be published on the Federal Register of Legislation.



- 1.68 As the Excise Act is administered by the Commissioner, section 114 of the Excise Act protects the Commissioner from proceedings being commenced for any action taken to collect an amount set by a tariff proposal for a specified period. This includes protecting the Commissioner from actions when collecting amounts set by a tariff proposal under section 160B. The Bill makes consequential amendments to section 114 to preserve this protection following the amendments that clarify the notice requirements as a notifiable instrument. *[Schedule #, items 22 and 23, subsection 114(2) and paragraph 114(2)(a) of the Excise Act]*
- 1.69 The amendments only apply to a notice published after the commencement of Division 1 of Part 3, being the day after 28 days after the day of Royal Assent. *[Schedule #, item 30]*

## Commencement, application, and transitional provisions

- 1.70 Part 1 of Schedule # to the Bill commences on the day after Royal Assent.
- 1.71 Part 2 of Schedule # to the Bill commences on the first day of the next quarter after Royal Assent.
- 1.72 Part 3 of Schedule # to the Bill commences on the day after the end of the period of 28 days beginning on the day after Royal Assent.