

# EXPOSURE DRAFT

## EXPOSURE DRAFT EXPLANATORY MATERIAL

### *Income Tax Assessment Act 1997*

### *Income Tax Assessment Regulations 2020*

The *Income Tax Assessment Act 1997* (the Act) is one of the main Commonwealth Acts that governs the income tax law in Australia. The Act provides for income tax to be calculated and collected, including for individuals, companies, trusts, partnerships and superannuation funds.

Section 909-1 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Income Tax Assessment Regulations 2020* (the Regulations) is to remake and improve the operation of the *Income Tax Assessment Regulations 1997* (the 1997 Regulations) before they ‘sunset’. The 1997 Regulations include certain operational rules for income tax calculations and liabilities for individuals, companies, trusts, partnerships and superannuation funds. They are necessary to support the operation of the Act. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. Legislative instruments generally cease to have effect after ten years unless their operation is extended or are remade by a new instrument.

Legislative instruments made in the years 1995 to 1999 that were registered on the Federal Register of Legislation on 1 January 2005, such as the 1997 Regulations, were automatically repealed on 1 April 2019. However, a certificate of deferral for 24 months was obtained in the *Legislation (Deferral of Sunsetting—Income Tax Assessment Regulations) Certificate 2018* which deferred the sunseting date for the 1997 Regulations until 1 April 2021.

The Regulations remake and improve the 1997 Regulations by omitting redundant provisions, simplifying language and restructuring provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions except in limited cases that are specifically identified in Attachment A. The Regulations broadly follow the structure of the 1997 Regulations.

Further details of the Regulations are set out in Attachment A.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 April 2021.

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### ATTACHMENT A

#### **Details of the *Income Tax Assessment Regulations 2020***

This attachment sets out further details of the *Income Tax Assessment Regulations 2020* (the Regulations). All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Income Tax Assessment Regulations 1997* (1997 Regulations).

Changes of a minor or machinery nature, such as the increased use of headings, renumbering and also references to ‘section’ rather than ‘regulation’ in accordance with current drafting practice, are generally not specifically identified in this Attachment. Where changes are made that are intended to apply in a different way or require further explanation, these are identified and explained in this Attachment.

Except as specifically provided below, all sections in the Regulations replicate the corresponding provisions in the 1997 Regulations, but have been updated in accordance with current drafting practice.

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## Chapter 1—Introduction and core provisions

### Part 1-1—Preliminary

#### Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Income Tax Assessment Regulations 2020*.

#### Section 2 – Commencement

This section provides that the Regulations commence on 1 April 2021.

#### Section 3 – Authority

This section provides that the Regulations are made under the *Income Tax Assessment Act 1997* (the Act).

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### Chapter 2—Liability rules of general application

#### **Part 2-5—Rules about deductibility of particular kinds of amounts**

##### **Division 26—Some amounts you cannot deduct, or cannot deduct in full**

Section 26-85.01 replicates the operation of the corresponding provision in the 1997 Regulations.

##### **Division 30—Gifts or contributions**

The provisions in Division 30 has been renumbered consecutively.

Division 30 contains procedural and administrative requirements for valuations and charging of fees which are supported the ‘necessary or convenient’ regulation making power in subsection 909-1(1) of the Act as these requirements are incidental or ancillary to working out the amount of charge for the valuation.

##### *Section 30-212.01—Valuation of gifts*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. The section has been updated to clarify that the valuation of a gift is to be made by the Commission and the Commissioner may charge for making that valuation. The notes to this section have also been simplified for consistency with other notes in the Regulations.

##### *Section 30-212.02—Application for valuation*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. This section has been revised to clarify that the application for valuation must include the deposit toward the charge for making the valuation. The charge for making the valuation is the actual cost of the valuation plus the Commissioner’s costs. The term ‘deposit’ clarifies that the amount that goes towards the cost of obtaining the valuation and the administrative cost to the Commissioner is not refundable.

The notes to this section has also been simplified.

##### *Section 30-212.03—Charge for making valuation*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. This section clarifies that the amount of charge for making a valuation of property is the sum of the actual cost of the valuation and the other costs to the Commissioner in obtaining the valuation such as administration costs from processing applications and the cost of producing certificates.

This section also provides that if the Commissioner starts a valuation of property but the application is withdrawn or treated as having no effect under subsection 30-212.06(2), the amount of the charge for making the valuation is an amount equal to the costs of the Commission in obtaining the incomplete valuation.

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### *Section 30-212.04—Advance payment of charge*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates.

### *Section 30-212.05—Commissioner not required to consider application until advance payment is paid*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. This section has been updated to only require the Commissioner to not consider an application if the required advance payment of the charge under section 30-212.04 (to which that application relates to) is not paid. The former provision in the 1997 Regulations also required the Commissioner to not consider the application if:

- the required certificate of authenticity to which that application relates to is not provided; or
- the requested estimate of a fee is not provided to the applicant by the Commissioner.

Those provisions have been removed from the Regulations as they are no longer relevant.

### *Section 30-212.06—Applications treated as having no effect*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, subregulation 30-212.06(2) from the 1997 Regulations has been removed from section 30-212.06 as it is redundant. Not paying the deposit toward the charge for the valuation is an example of the way the application may not comply with section 30-212.02. The notes to this section have also been revised as a result.

### *Section 30-212.07—Crediting and repaying valuation charges*

This section replicates the corresponding provision in the 1997 Regulations editorial updates. In particular, consequential amendments have been made to this section as a result of the changes in section 30-212.02.

The term ‘court of competent jurisdiction’ recognises the ability of the Commonwealth to institute proceedings in different jurisdictions to recover the charge payable for making the valuation depending on the claim. The provision does not specify the particular courts to ensure that updates are not required if there is a change in the jurisdiction or the court system in future. This approach is consistent with how the corresponding provision in the 1997 Regulations was drafted.

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### *Section 30-212.08—Valuation certificates*

This section replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

### **Division 31—Conservation covenants**

Division 31 contains procedural and administrative requirements for valuations and charging of fees which are supported the ‘necessary or convenient’ regulation making power in subsection 909-1(1) of the Act. These procedural and administrative requirements are incidental or ancillary to working out the amount that may be charged for the valuation.

### *Section 31-15.01— Valuation of land*

This section replicates the corresponding provision in the 1997 Regulations with minor editorial updates. The notes to this section has been simplified.

### *Section 31-15.02— Application for valuation*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. This section clarifies that the fee accompanying the application is the deposit toward the charge for making the valuation. The cross-reference to subsection 31-15(1) of the Act has been removed as it is not necessary to the interpretation of this provision.

The notes to this section also been simplified.

### *Section 31-15.03 —Charge for making valuation*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. This section clarifies that the amount of charge for making a valuation of property is the sum of the actual cost of the valuation and the other costs to the Commissioner in obtaining the valuation such as, administration costs from processing applications and cost of producing certificates.

This section also provides that if the Commissioner starts a valuation of property but the application is withdrawn or treated as having no effect under subsection 31-15.06(2), the amount of the charge for making the valuation is an amount equal to the costs of the Commission in obtaining the incomplete valuation.

### *Section 31-15.04— Advance payment of charge*

This section replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

### *Section 31-15.05— Commissioner not required to consider application until advance payment is paid*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, this section clarifies that the Commissioner is not required to consider applications where the required advance payment of the charge

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under section 30-212.04 is not paid. Other types of applications which the Commissioner was not required to consider under the corresponding provision in the 1997 Regulations have been removed from the Regulations as they are no longer relevant.

### *Section 31-15.06— Applications treated as having no effect*

This section replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, subregulation 31-15.06(2) of the 1997 Regulations has been removed as it was redundant. This is because not paying the deposit toward the charge for the valuation is an example of a way in which the application may not comply with section 31-15.02 that is captured by subsection 31-15.06(1). The notes to this section have also been revised as a result.

### *Section 31-15.07— Crediting and repaying valuation charges*

This section replicates the corresponding provision in the 1997 Regulations with minor editorial updates. Consequential amendments have been made to this section as a result of the changes in section 31-15.02.

The term ‘court of competent jurisdiction’ recognises the ability of the Commonwealth to institute proceedings in different jurisdictions to recover the charge payable for making the valuation depending on the claim. The provision does not specify the particular courts to ensure that updates are not required if there is a change in the jurisdiction or the court system in future. This approach is consistent with how the corresponding provision in the 1997 Regulations was drafted.

### *Section 31-15.08— Valuation certificates*

This section replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

## **Part 2-15—Non-assessable income**

### **Division 50—Exempt entities**

#### **Subdivision 50-A—Various exempt entities**

Sections 50-50.01 and 50-50.02 replicate the corresponding provisions in the 1997 Regulations, but have been updated in accordance with current drafting practice.

The date of effect column from regulation 50-50.01 and the starting date column in regulation 50-50.02 in the 1997 Regulations have been removed as the Regulations apply prospectively from commencement only, and any operation of relevant provisions for previous income years will continue to be covered by the 1997 Regulations.

Regulation 50-50.03 of the 1997 Regulations has been removed as it is no longer required.

Section 50.55.01 also replicates the corresponding provisions in the 1997 Regulations, but it has been amended to remove the starting date column that is no longer required.

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### **Division 51—Exempt amounts**

Section 51-5.01 replicates the corresponding provisions in the 1997 Regulations with minor editorial updates. In particular, the reference to the ‘2006 allowances determination’ has been removed because that determination has been repealed.

Regulation 51-42.01 of the 1997 Regulations has been removed as it is no longer required. This is because the Regulations apply prospectively from commencement only, and any operation of relevant provisions for previous income years will continue to be covered by the 1997 Regulations.

### **Part 2-20—Tax offsets**

#### **Division 61—Generally applicable tax offsets**

##### **Subdivision 61-G—Private health insurance offset complementary to Part 2-2 of the *Private Health Insurance Act 2007***

Section 61-220.01 replicates regulations 61-220.01 and 61-220.02 in the 1997 Regulations with some updates to improve clarity. In the remake, only one section is required to replicate the operation of both sections in the 1997 Regulations. The definitions of ‘complying health insurance policy’ and ‘PHIIB’ (a private health insurance incentive beneficiary) have been removed from section 61-220.01 because those definitions are contained in section 995-1 of the Act. The remaining definitions have been incorporated into new subsection 61-220.01(1) of the Regulations.

Section 61-220.01 clarifies that a private health insurer must provide an annual statement to a PHIIB about a complying health insurance policy within 14 days after the request has been made.

This section is supported by the ‘necessary or convenient’ power in subsection 909-1(1) of the Act as the requirements relating to private health insurance statements are incidental or ancillary to the administration of the eligibility for the private health insurance tax offset. This ensures that in the self-assessment regime of the taxation system, adequate records are maintained and claims can be substantiated.

### **Part 2-25—Trading stock**

#### **Division 70—Trading stock**

##### **Subdivision 70-C—Accounting for trading stock you hold at the start or end of the income year: section 70-55.01**

Section 70-55.01 replicates the corresponding division in the 1997 Regulations, but it has been updated in accordance with current drafting practices.

### **Part 2-40—Rules affecting employees and other taxpayers receiving PAYG withholding payments**



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### **Division 83A—Employee share schemes**

#### **Subdivision 83A-A—Objects of Division and key concepts: section 83A-5.01**

Section 83A-5.01 replicates the corresponding provision in the 1997 Regulations.

#### **Subdivision 83A-E—Miscellaneous: sections 83-315.01 to 83A-315.09**

Section 83-315.01 has been amended to clarify which rights and interests are being referred to and how they relate to the ESS interest in relation to which the amount is being specified for the purposes of subsection 83A-315(1) of the Act. The changes ensure that the same terminology is being used to refer to the same rights.

Sections 83-315.02 to 83-315.03 replicate the corresponding provisions in the 1997 Regulations, but has been revised to improve the clarity of the provisions.

Section 83-315.04 replicates the corresponding provision in the 1997 Regulations.

Sections 83A-315.05 to 83A-315.09 has been updated in accordance with the current drafting style for method statements, formulas and tables.

These changes are intended to improve readability but have not altered their scope or substantive operation.

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### Chapter 3—Specialist liability rules

#### **Part 3-30—Superannuation**

##### **Division 290—Contributions to superannuation funds**

###### **Subdivision 290-C—Deducting personal contributions: sections 290-155.01, 290-155.05 and 290-170.01**

Sections 290-155.01 and 290-155.05 replicate the corresponding provisions in the 1997 Regulations with minor editorial updates. A note explaining the term ‘approved form’ has been added below each provision to signpost where the meaning of this term can be found in the Act.

Section 290-170.01 replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

The changes are intended to improve clarity but not alter the scope or substantive operation of the provisions.

##### **Division 291—Excess concessional contributions**

###### **Subdivision 291 B—Excess concessional contributions**

Section 291-25.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. Notes have been added and updated to assist with interpreting the law. Generally, the operation of the provision remains the same. Subregulations (2), (3), (4) and (5) of the corresponding provision in the 1997 Regulations have been redrafted and reorganised with a clearer structure. The new subsections collectively achieve the same result.

For clarity, it does not matter whether the amount referred to in subsection 291-25.01(2) (that meets the conditions) is an assessable contribution in the same year as the allocation or in a different year from the allocation.

###### **Subdivision 291-C—Modifications for defined benefit interests: sections 291-170.01 to 291-170.07**

Subdivision 291-C has been drafted to replicate the operation of Subdivision 292-D in the 1997 Regulations. In the remake, Subdivision 292-D of the 1997 Regulations has been moved to new Subdivision 291-C to better reflect the progressive amendments in the Act, the *Income Tax (Transitional Provisions) Act 1997* and in the 1997 Regulations. The remake consolidates the successive amendments to the tax law in this area and improves the structure of the regulations with consistency in the sequencing of subdivisions.

Section 291-170.01 is a new provision that clarifies how the law applies where there are two or more superannuation sub-funds in relation to defined benefit members of a superannuation fund. As a result of restructuring the relevant provisions in the Regulations, this provision is necessary to give effect to how the law applies under the new structure. This outcome is consistent with the overall operation of the 1997 Regulations. This provision requires the application of Subdivision 291-C and

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Schedule 1A to the superannuation fund separately in respect of each superannuation sub-fund.

The definitions in section 292.170.01 of the 1997 Regulations have been redrafted and included in the Dictionary in new section 995-1.01.

Section 291-170.02 replicates regulation 292-170.02 in the 1997 Regulations with minor editorial updates.

Section 291-170.03 generally replicates regulation 292-170.03 in the 1997 Regulations. Subregulations 292-170.03(2), (3), (4), (5) and (6) in the 1997 Regulations have been redrafted and reorganised with a clearer structure. In particular, the operation of subregulation 292-170.03(6) in the 1997 Regulations has been integrated into new subsection 291-170.03(2).

Section 291-170.04 replicates regulation 292-170.04 in the 1997 Regulations with editorial updates. Subregulations 292-170.04(2), (3), (4), (5), (5A) and (6) of the corresponding provision in the 1997 Regulations have been redrafted and reorganised with a clearer structure in new subsections (3), (4), (5), (6), (7) and (8) respectively. The new subsections collectively achieve the same result.

Section 291-170.05 replicates regulations 292-170.05 and 292-170.06 in the 1997 Regulations with editorial updates. In the remake, only one section is required to replicate the operation of both regulations in the 1997 Regulations. Subregulations (2), (3), (4), (5), (6), (7) and (8) of regulations 292-170.05 and 292-170.06 of the 1997 Regulations have been redrafted and reorganised with a clearer structure. In particular, for each regulation, the operation of subregulations (7) and (8) in the 1997 Regulations have been integrated into the provisions they affect. The new subsections collectively achieve the same result.

There is no section 291-170.06 in the remake. This is because the operation of regulation 292-170.06 in the 1997 Regulations has been integrated into new section 291-170.05 (see above).

Section 291-170.07 replicates regulations 292-170.07 and 292-170.08 in the 1997 Regulations with editorial updates. In the remake, only one section is required to replicate the operation of both regulations in the 1997 Regulations. Subregulations (2), (3), (4), (5), (6), and (7) of regulations 292-170.07 and 292-170.08 of the 1997 Regulations have been redrafted and reorganised with a clearer structure. In particular, for each regulation, the operation of subregulations (6) and (7) in the 1997 Regulations have been integrated into the provisions they affect. The new subsections collectively achieve the same result.

There is no section 291-170.08 in the remake. This is because the operation of regulation 292-170.08 in the 1997 Regulations has been integrated into new section 291-170.07 (see above).

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### **Division 292—Excess non concessional contributions**

#### **Subdivision 292-C—Excess non concessional contributions tax**

Section 292-90.01 replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

### **Division 293—Sustaining the superannuation contribution concession**

#### **Subdivision 293-D—Modifications for defined benefit interests: sections 293-115.01 to 293-115.20**

Subdivision 293-D has been drafted to replicate the operation of Subdivision 293-DA in the 1997 Regulations. In the remake, Subdivision 293-DA of the 1997 Regulations has been moved to new Subdivision 293-D to better reflect the structure of the Act and the Regulations. In particular, Subdivision 293-D in the 1997 Regulations is no longer required as it applied only to the 2012-13 income year. Consequently, Subdivision 293-DA in the 1997 Regulations has been renumbered as new Subdivision 293-D. However, the legislative references for the operative provisions have not changed as a result of the remake.

Sections 293-155.05 to 293-155.20 replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

#### **Subdivision 293 E—Modifications for constitutionally protected State higher level office holders: section 293-145.01**

Section 293-145.01 replicates the corresponding provision in the 1997 Regulations with minor editorial updates. The Regulations provide for a list of constitutionally protected State higher level officer holders in the same way as the 1997 Regulations.

### **Division 294—Transfer balance cap**

#### **Subdivision 294-B—Transfer balance account: section 294-25.01**

Section 294-25.01 replicates the corresponding provision in the 1997 Regulations.

#### **Subdivision 294-C—Transfer balance debits: sections 294-80.01 to 294-80.03**

Sections 294-80.01 to 294-80.03 replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

#### **Subdivision 294 D—Modifications for certain defined benefit income streams: sections 294-130.01, 294-135.01 and 294-145.01**

Section 294-130.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. Subregulations 294-130.01(3A), (3B) and (4) in the 1997 Regulations have been renumbered as new subsections (4), (5) and (6) respectively. The new subsections collectively achieve the same result.

Sections 294-135.01 and 294-145.01 replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

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### **Division 295—Taxation of superannuation entities**

#### **Subdivision 295 D—Contributions excluded: sections 295-265.01 to 295-265.05**

Subdivision 295-D replicates the operation of regulation 295-265.01 in the 1997 Regulations. Former regulation 295-265.01 in the 1997 Regulations is restructured by separating that provision into new sections 295-265.01 to 295-265.05. This structure more clearly provides for the obligations and the steps applied in complying with the law.

Section 295-265.01 generally replicates the framework in the corresponding provision in the 1997 Regulations with minor editorial updates.

Sections 295-265.02 to 295-265.05 provide more details about the operation of section 295-265.01, including the steps in the two methods of calculation and how those calculations are made.

The new provisions in Subdivision 295-D do not alter the substantive operation of regulation 295-265.01 in the 1997 Regulations. Where there are new provisions that clarify the obligation of the superannuation provider, such as to keep records and provide information about their calculations when requested, the making of those regulations relies on the ‘necessary or convenient’ power authorised by subsection 909-1(1) of the Act. This is because these obligations are ancillary to a superannuation fund provider’s obligation to comply with taxation law and substantiate claims. This ensures that in the self-assessment regime of the taxation system, adequate records are maintained and claims can be substantiated.

#### **Subdivision 295 F—Exempt income: section 295-385.01**

Section 295-385.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, references in the corresponding provision to former subregulations 995-1.01(3) and (4) in the 1997 Regulations have been updated with references to the relevant subsections in new section 300-70.02 of the Regulations. The provision is accompanied by two notes to provide more clarity about the operation of the provision.

#### **Subdivision 295 G—Deductions: section 295-465.01**

Section 294-465.01 replicates the corresponding provision in the 1997 Regulations with minor editorial updates. Two new notes have been included in this section, regarding the terms ‘terminal medical condition’ and ‘superannuation death benefit’. The notes refer to other relevant provisions in the Act and the Regulations.

### **Division 301—Superannuation member benefits paid from complying plans etc.**

#### **Subdivision 301-D—Departing Australia superannuation payments: section 301-170.01**

Section 301-170.01 replicates the corresponding provision in the 1997 Regulations with minor editorial updates. A note to the section has been added to improve the clarity of the provision.

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### **Subdivision 301-E—Superannuation lump sum member benefits less than \$200: section 301-225.01**

Section 301-225.01 replicates the corresponding provision in the 1997 Regulations with minor editorial updates. The notes to the section has been updated and simplified in accordance with current drafting practice.

### **Division 302—Superannuation death benefits paid from complying plans etc.**

The numbering for this subdivision has been updated to ensure consistency with the rest of the instrument.

#### **Subdivision 302-D—Definitions relating to dependants**

Sections 302-195.01 and 302-195.02 replicate regulations 302-195 and 302-195A in the 1997 Regulations respectively, with minor editorial updates. The new provisions ensure consistency in the numbering of the provisions.

Note 1 to section 302-195.01 is an updated version of the former note in the corresponding provision in the 1997 Regulations. In the remake, two additional notes have been included that refer to other relevant provisions in the Act and Regulations.

Section 302-200.01 replicates the corresponding provisions in the 1997 Regulations with minor editorial updates.

Section 302-200.02 replicates the corresponding provisions in the 1997 Regulations with minor editorial updates. This section has been updated to clarify that for the purposes of paragraphs 302-200.02(3)(b) and (4)(b), it is sufficient if one or more of the requirements in subsection 302-200(1) of the Act are not met.

#### **Division 306—Roll-overs etc.**

Section 306-10.01 replicates the corresponding provisions in the 1997 Regulations with minor editorial updates. A new note has been inserted to specify that the kinds of superannuation benefits described in this section are not roll-over superannuation benefits.

#### **Division 307—Key concepts relating to superannuation benefits**

##### **Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits: sections 307-70.01 and 307-70.02**

Subdivision 307-B is drafted to replicate the operation of regulation 307-70.01 in former subdivision 307-B of the 1997 Regulations.

Section 307-70.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, former subregulation 307-70.01(2) of the 1997 Regulations distinguished between superannuation benefits paid from 1 January 2007 to 30 June 2017 (inclusive) and superannuation benefits paid at other times when an election under former regulation 995-1.03 of the 1997 Regulations has been made. The election can no longer be made and this distinction is no longer relevant. The Regulations apply prospectively from commencement only, and any operation of

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relevant provisions for previous income years will continue to be covered by the 1997 Regulations.

Section 307-70.02 is a new provision that replicates the definition of ‘superannuation income stream’ in subregulation 995-1.01(1) of the 1997 Regulations. The substantive meaning of this term is unchanged. However, the definition has been updated to reflect current drafting practice. The definition has been relocated to new section 307-70.02 so that it is expressly made under subsection 307-70(2) of the Act. The definition expressly applies for both the Act as well as the Regulations.

### **Subdivision 307-C—Components of a superannuation benefit: sections 307-125.01 and 307-125.02**

Section 307-125.01 replicates the corresponding provisions in the 1997 Regulations with minor editorial updates.

Section 307-125.02 replicates the operation of subregulation 307-125.02 in the 1997 Regulations with editorial updates. In particular, the order of subregulations (2) and (3) in the 1997 Regulations have been swapped to correspond with the operation of subsection 307-125.02(1). The changes are intended to improve clarity but not alter the scope or substantive operation of the provision.

### **Subdivision 307-D—Superannuation interests: sections 307-200.01 to 307-200.05, 307-205.01, 307-205.01A to 307-205.02 to 307-205.02E**

Section 307-200.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. This section clarifies that, for the purposes of section 307-200 of the Act, sections 307-200.02 to 307-200.05 specify ways of treating superannuation interests other than for the purposes of:

- calculating an amount of contributions under Subdivision 291-C of the Act; or
- calculating low tax contributions under Subdivision 293-D of the Act.

Sections 307-200.02 to 307-200.05 replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

Sections 307-205.01 and 307-205.01A generally replicate the operation of regulation 307-205.01 in the 1997 Regulations with editorial updates. New section 307-205.01A replicates Step 1 of the method statement under subregulation 307-205.01(2) in the 1997 Regulations (regarding a defined benefit interest) as a new provision.

Section 307-205.02 replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, a number of subregulations have been reordered to improve the clarity and readability of the provision.

Sections 307-205.02A to 307-205.02E replicate the corresponding provisions in the 1997 Regulations. In the remake, a number of subregulations have been rearranged to improve the clarity and readability of the provisions.

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The changes are intended to improve clarity but not alter the scope or substantive operation of the provisions.

### **Part 3-45—Rules for particular industries and occupations**

#### **Division 393—Farm management deposits: sections 393-20.01 to 393-40.01**

##### **Subdivision 393-B—Meaning of farm management deposit and owner**

This Subdivision has been renumbered to ensure consistency with the rest of the Regulations. The simplified outline to this Division is redundant and has been removed because it duplicates the outline in the Act.

Section 393-20.01 replicates regulation 393-5 in the 1997 Regulations with minor editorial updates. The note in the former regulation has been updated and renumbered to improve readability.

Section 393-20.02 replicates regulation 393-10 of the 1997 Regulations with editorial updates. The subsection clarifies that for the purposes of paragraph 393-20(2)(c) of the Act, a form used to apply to an FMD provider to make a farm management deposit must contain:

- one of the statements set out in Part 1 of Schedule 1C;
- statements to the effect of the statements set out in Part 2 of Schedule 1C;
- statements setting out the additional information required by Part 3 of Schedule 1C.

Section 393-40.01 replicates regulation 393-15 of the 1997 Regulations with editorial updates. The provision has been simplified and references to the former versions of the determinations that are no longer relevant have been removed. These include:

- *Natural Disaster Relief and Recovery Arrangements Determination 2012* Version 2.0, determined by the Minister for Justice on 29 October 2015; and
- *Natural Disaster Relief and Recovery Arrangements Determination 2017*, determined by the Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism on 1 June 2017.

Section 393-40.01 only refers to a Category C measure and eligible disaster as defined in the *Disaster Recovery Funding Arrangements 2018*.

The Regulations apply prospectively from commencement only, and any operation of relevant provisions for previous income years continues to be covered by the 1997 Regulations.

The note to section 393-40.01 has been revised to clarify that a repayment that satisfies this section is not precluded from being a farm management deposit under subsection 393-40(1) or (2) of the Act. A note has also been added to this section to provide the website address where the *Disaster Recovery Funding Arrangements 2018* can be freely accessed.



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These changes are intended to improve clarity but have not altered the scope or substantive operation of the provisions.

### **Division 418—Exploration for minerals**

#### **Subdivision 418-DA—Exploration credits allocation: section 418-103.01**

Section 418-103.01 replicates the corresponding provisions in the 1997 Regulations.

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### Chapter 4—International aspects of income tax

#### Part 4-5—General

##### Division 775—Foreign currency gains and losses

##### Subdivision 775-B—Realisation of forex gains or losses: section 775-145.01

Section 775-145.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. A worked example was included in the note to former regulation 775-145.01 of 1997 Regulations. The example in the note has been removed from the legislation and is replicated below.

##### **Example demonstrating the use of the weighted average basis to a foreign currency bank account**

John deposits amounts of US dollars (US\$) into his bank account at times T1, T2, T3 and T7. At times T4, T5 and T6, John either withdraws some of the US dollars or draws on the account's credit facility.

In this example, a weighted average calculation is made at the time of each transaction, where applicable. An alternative method would be to make one calculation for the entire income year (although this alternative method is not appropriate in this example because the account balance changes from credit to debit). Generally, either method is suitable as long as it is used consistently.

The weighted average cost (WAC) of the US\$ which John holds from times T1 to T7 is shown in the table.

Time	US\$ deposit or withdrawal	Exchange rate US\$ : A\$	Exchange rate A\$ : US\$	A\$ amount	US\$ balance	A\$ equivalent balance (WAC)	WAC per US\$
T <sub>1</sub>	1 000	1.3889	0.7200	1 388.89	1 000	1 388.89	1.3889
T <sub>2</sub>	2 500	1.4286	0.7000	3 571.43	3 500	4 960.32	1.4172
T <sub>3</sub>	1 750	1.3699	0.7300	2 397.26	5 250	7 357.58	1.4014
T <sub>4</sub>	-2 800	1.3333	0.7500	-3 733.33	2 450	3 433.54	1.4014
T <sub>5</sub>	-4 000	1.2821	0.7800	-5 128.21	-1 550	-1 987.18	1.2821
T <sub>6</sub>	-1 000	1.3158	0.7600	-1 315.79	-2 550	-3 302.97	1.2953
T <sub>7</sub>	1 200	1.3699	0.7300	1 643.84	-1 350	-1 748.63	1.2953

The WAC per US\$ does not change upon a withdrawal while (and to the extent that) the account balance remains in credit. Also, when a deposit is made, the WAC per US\$ does not change while (and to the extent that) the account remains in debit.

##### Division 830—Foreign hybrids

##### Subdivision 830-A—Meaning of foreign hybrid: section 830-15.01

Section 830-15.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. A new note to this section sets out the requirement that for a company to be a limited partnership for the purposes of the *Limited Liability Partnerships Act 2000* (UK), it must satisfy the requirement under this section at all times during the income year.

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### Chapter 6—The Dictionary

#### **Part 6-1—Concepts and topics**

##### **Division 960—General**

###### **Subdivision 960-C—Foreign currency: section 960-50.01**

Section 960-50.01 replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, the items in the table to regulation 960.50.01 in the 1997 Regulations has been rearranged in ascending order. Legislative references have also been updated accordingly.

###### **Subdivision 960-D—Functional currency: sections 960-80.01 to 960-80.03**

Sections 960-80.01 and 960-80.02 replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

Section 960-80.03 replicates the corresponding provision in the 1997 Regulations with editorial updates. In particular, the structure of the section has been simplified. This section regulates the translation rule for translating an amount from the applicable function currency into Australian currency. The changes are intended to improve clarity but not alter the scope or substantive operation of the provisions.

##### **Division 974—Debt and equity interests**

###### **Subdivision 974-F—Related concepts: sections 974-135.01 to 974-135.05**

Section 974-135.01 replicates the operation of regulations 974-135A and 974-135B in the 1997 Regulations. The section consolidates and simplifies the provisions that regulated the debt and equity interest concepts for non-cumulative redeemable preference shares issued by credit unions and mutual building societies. The relevant prudential standard referred to in the criteria for the preference share has been updated to reflect the most up to date prudential standard.

Sections 974-135.02 to 974-135.05 replicate regulations 974-135C to 974-135F in the 1997 Regulations respectively, with minor editorial updates.

#### **Part 6-5—Dictionary definitions**

##### **Division 995—Definitions: sections 995-1.01 to 995-1.06**

Division 995 generally replicates the corresponding provisions in the 1997 Regulations with editorial updates. The Dictionary incorporates relevant definitions that were included in various parts of the 1997 Regulations that are now consolidated in one location in accordance with current drafting practice. However, some definitions are still included in the operative provisions in the Regulations. The relevant terms in the Dictionary refer to the location of those definitions that are contained in separate provisions. Where there are minor updates to how a definition is phrased, the changes are intended to improve clarity but not alter the scope or substantive operation of the definition.

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Section 995-1.01 generally replicates the corresponding provisions in the 1997 Regulations with editorial updates. A note has been included to explain that a number of expressions used in the Regulations are defined in the Act and therefore do not need to be defined separately in the Regulations.

Some notable updates to the definitions in section 995-1.01 are explained below. The changes are intended to improve clarity but not alter the scope or substantive operation of the provisions. In the remake:

- the definition of ‘non-accruing member’ is clarified so that for the purposes of section 291-170.04 and Schedule 1A, the term has the meaning given in subsection 291-170.04(5). This term was previously included in former regulation 293-115.05 of the 1997 Regulations. While this outcome was achieved in the 1997 Regulations, which referred to the defined meaning of non-accruing member, the new draft expressly provides for this outcome;
- the definition of ‘on-hold member’ is updated to remove unnecessary language in the definition. This term was previously included in former regulation 292-170.04 of the 1997 Regulations. The update removes the redundant words ‘in relation to a defined benefit member of a superannuation fund’ because these terms are not used in the meaning of ‘on-hold member’ in subsection 291-170.04(6);
- the definition of ‘pensioned member’ is updated to remove unnecessary language in the definition. This term was previously included in former regulation 292-170.04 of the 1997 Regulations. The update removes the redundant words ‘in relation to a defined benefit member of a superannuation fund’ because these terms are not used in the meaning of ‘pensioned member’ given by subsection 291-170.04(7); and
- the definition of ‘superannuation sub-fund’ is updated to include ‘superannuation’ which clarifies that the sub-funds relate to superannuation sub-funds. The term ‘sub-fund’ was previously included in former regulation 292-170.01 of the 1997 Regulations, where its relationship to superannuation was clear. As a result of the relocation of this term to the dictionary, ‘superannuation’ is included to improve the clarity and readability of this term.

Section 995-1.02 replicates the operation of regulation 995-1.05 in the 1997 Regulations with editorial updates. The meaning of the term ‘approved stock exchange’ in former regulation 995-1.05 operated by reference to former Schedule 5 to the 1997 Regulations. Section 995-1.02 defines the term ‘approved stock exchange’ and operates similarly to the former provisions by reference to new Schedule 3 to the Regulations. The changes are intended to improve clarity and consistency in numbering but not alter the scope or substantive operation of the definition.

Section 995-1.03 replicates the operation of regulation 995-1.04 in the 1997 Regulations with editorial updates. In particular, part of the definition of the term ‘constitutionally protected fund’ in former paragraph 995-1.04(b) operated by reference to former Schedule 4 to the 1997 Regulations. Former Schedule 4 to the 1997 Regulations is repealed. The meaning of the term ‘constitutionally protected

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fund' in paragraph 995-1.03(b) does not now refer to a schedule of the Regulations. The contents of former Schedule 4 to the 1997 Regulations have been updated and integrated into the table in new section 995-1.03. The changes are intended to improve clarity and consistency in numbering but not alter the scope or substantive operation of the definition.

Section 995-1.04 is a new provision that provides for the definition of the term 'contributions-splitting superannuation benefit'. Former paragraph 290-170.01(c) of the 1997 Regulations stated that the term is interpreted in accordance with the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Accounts Regulations 1997*. In the remake, this definition has been relocated from the former provision in the 1997 Regulations to section 995-1.04 and provides clarity to the location of the relevant provisions in the respective regulations. The changes are intended to improve clarity but not alter the scope or substantive operation of the definition.

Section 995-1.05 is a new provision that provides for the definition of the term 'superannuation annuity'. The term was previously defined in former subregulation 995-1.01(1) in the 1997 Regulations. The definition is redrafted as a separate section in the Dictionary and with minor updates that reflect current drafting practice. The changes are intended to improve clarity but not alter the scope or substantive operation of the provisions.

Section 995-1.06 is a new provision that provides for the definition of the term 'terminal medical condition'. The term was previously defined in former subregulation 995-1.01(1) and referenced former regulation 303-10.01 of the 1997 Regulations. The definition is redrafted as a separate section in the Dictionary and has minor updates that reflect current drafting practice. For clarity, the definition is updated so that if there is one certification period provided by one of the registered medical practitioners, then the certification period has not ended. Alternatively, if there is more than one certification period, neither of the certification periods have ended.

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### **Schedule 1A—Method of working out amount of notional taxed contributions**

In the remake, the note to Schedule 1A has been modified to update the references to the Act. The changes are intended to improve clarity but not alter the scope or substantive operation of the Schedule.

#### **Part 1—Preliminary**

##### **Division 1—Definitions: clauses 1.1 to 1.5 of Schedule 1A**

Clause 1.1 of Schedule 1A replicates the corresponding provisions in the 1997 Regulations with editorial updates. The provision defines ‘accruing member’.

Clause 1.2 of Schedule 1A replicates the operation of former clauses 1.2 and 1.3 of Schedule 1A in the 1997 Regulations. The provision defines ‘benefit category’. In the remake, the operation of former clause 1.3 in the 1997 Regulations has been incorporated in clause 1.2 as subclause 1.2(2). The changes are intended to improve clarity but not alter the scope or substantive operation of the definition.

A worked example and note were included under former clause 1.3 of Schedule 1A to the 1997 Regulations. The example and note have been removed from the legislation and are replicated below.

#### **Example:**

A defined benefit fund provides a benefit accrual of 10% plus twice member contribution rate of final average salary for each year of membership. Members can contribute at either 4% or 6% of salary. Member A contributes at 4% and member B contributes at 6%. An actuary must not certify that A and B are in the same benefit category unless the new entrant rates, as calculated under this Schedule, for members who contribute at 4% and 6%, are equal.

A member would not be expected to move from one benefit category to another unless 1 of the following relevant external events occurs:

- a) the member ceases accruing benefits under one section of the fund rules but commences accruing benefits under another section of the fund rules as a result of a change in employment status, e.g. promotion;
- b) the member continues accruing benefits under one section of the fund rules and commences accruing benefits under another section of the fund rules as a result of a change in employment status, e.g. promotion;
- c) the member ceases accruing benefits under one section of the fund rules and commences or continues accruing benefits under another section of the fund rules as a result of reaching maximum accrual or a change in employment status, e.g. demotion;
- d) the exercise of a member option which results in a material change in the level of employer support;
- e) a change in fund rules which directly affected the member’s rate of accrual of retirement benefits in respect of future membership after 1 July 2007.

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### Example for paragraph (d):

If the new entrant rates calculated for members with different member contribution rates are not equal, and, as a result, there are a number of benefit categories corresponding to the different member contribution rates, then a change in contribution rate would result in a move between benefit categories.

Clause 1.3 of Schedule 1A is a new provision that defines the term ‘defined benefit fund’. This means a superannuation fund in which a member has a defined benefit interest. This definition is included to improve the clarity of other provisions that rely on this term.

Clause 1.4 of Schedule 1A generally replicates the operation of the corresponding provision in the 1997 Regulations with editorial updates. In the Regulations:

- subclause 1.4(1) replicates the corresponding provision in the 1997 Regulations; and
- subclause 1.4(2) updates the corresponding provision in the 1997 Regulations so that an actuary must certify that a member belongs to more than one benefit category on the same day if the actuary is satisfied that the amount of notional taxed contributions to be reported will be materially different from the amount of notional taxed contributions that would have been reported had the member belonged to only one benefit category on each relevant day. In the remake, the actuary must certify if certain conditions are met, rather than refrain from doing so if certain conditions are not met (as in the former provision). This relies on the ‘necessary or convenient’ power in section 909-1 of the Act because it is ancillary to the compliance obligations of the superannuation fund to maintain adequate records and provide them when requested. This ensures that in the self-assessment regime of the taxation system, adequate records are maintained and claims can be substantiated.

Clause 1.5 of Schedule 1A replicates corresponding provision in the 1997 Regulations with minor editorial updates.

### **Division 2—Method: clauses 1.6 to 1.8 of Schedule 1A**

Clause 1.6 of Schedule 1A replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is restructured to include paragraphs for clarity.

Clause 1.7 of Schedule 1A replicates the corresponding provision in the 1997 Regulations with editorial updates. The changes are intended to improve clarity but not alter the scope or substantive operation of the provisions. While the underlying formula in the provision remains the same, the following updates have been made:

- ‘Superannuation salary amount’ replaces the ‘S’;
- ‘Number of days’ replaces the ‘D’; and

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- ‘Member contributions amount’ replaces the ‘M’.

Clause 1.8 of Schedule 1A replicates the corresponding provision in the 1997 Regulations with editorial updates. In the remake, the changes are intended to improve clarity but not alter the scope or substantive operation of the provisions. While the underlying formula in the provision remains the same, the following updates have been made:

- ‘Sum of NTC’ replaces the ‘T’;
- ‘Increased exit benefit adjustment amount’ replaces the ‘W’;
- ‘Category change or discretion adjustment amount’ replaces the ‘X’;
- ‘Governing rules change adjustment amount’ replaces the ‘Y’; and
- ‘Increased superannuation salary adjustment amount’ replaces the ‘Z’.

### **Part 2—New entrant rate: clauses 2.1 to 2.6 of Schedule 1A**

Clause 2.1 of Schedule 1A replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

Clause 2.2 of Schedule 1A generally replicates the corresponding provision in the 1997 Regulations with editorial updates. In the remake, former subclause 2.2(2) of Schedule 1A to the 1997 Regulations is instead included as a note. While this outcome was clear in the 1997 Regulations because the subclause was descriptive and not operational, this change simplifies and improves the clarity of the provision.

Clauses 2.3 to 2.6 of Schedule 1A replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

### **Part 3—Valuation parameters: clauses 3.1 to 3.11 of Schedule 1A**

Clauses 3.1 to 3.11 of Schedule 1A replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

### **Part 4—Exercise of discretion to pay a benefit greater than the benefit assumed in calculating the new entrant rate: clause 4.1 of Schedule 1A**

Clause 4.1 of Schedule 1A generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated consistently with how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 4.1(a) is to be included in the formula in clause 1.8.

For any other case, paragraph 4.1(b) of Schedule 1A provides that the amount is zero.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.



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### **Part 5—Member has changed benefit category: clause 5.1 of Schedule 1A**

Clause 5.1 of Schedule 1A generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated to follow how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 5.1(1)(a) is to be included in the formula in clause 1.8.

For any other case, paragraph 5.1(1)(b) of Schedule 1A provides that the amount is zero.

These updates are intended to improve clarity but not alter the scope or feature of the substantive operation of the provisions.

Subclause 5.1(2) of Schedule 1A is updated to specify ‘decrement and other parameters’ set out in Part 3.

### **Part 6—Governing rules have changed: clause 6.1 of Schedule 1A**

Clause 6.1 of Schedule 1A generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated to follow how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 6.1(1)(a) is to be included in the formula in clause 1.8.

For any other case, paragraph 6.1(1)(b) of Schedule 1A provides that the amount is zero.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

Subclause 6.1(2) of Schedule 1A is updated to specify ‘decrement and other parameters’ set out in Part 3.

### **Part 7—Non-arm’s length increase in superannuation salary: clause 7.1 of Schedule 1A**

Clause 7.1 of Schedule 1A generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated to follow how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 7.1(1)(a) is to be included in the formula in clause 1.8.

In any other case, paragraph 7.1(1)(b) of Schedule 1A provides that the amount is zero.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

Subclause 7.1(2) of Schedule 1A is updated to specify ‘decrement and other parameters’ set out in Part 3.

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### **Schedule 1AA—Working out defined benefit contributions**

In the remake, the note to Schedule 1AA has been modified to update the references to the Act. The changes are intended to improve clarity but not alter the scope or substantive operation of the Schedule.

#### **Part 1—Preliminary**

##### **Division 1—Definitions: clauses 1.1 to 1.5 of Schedule 1AA**

Clause 1 of Schedule 1AA replicates the corresponding provisions in the 1997 Regulations with minor editorial updates. The provision defines ‘accruing member’.

Clause 2 of Schedule 1AA generally replicates the corresponding provisions in the 1997 Regulations with editorial updates. The provision defines ‘benefit category’.

Clause 2A of Schedule 1AA is a new provision that defines the term ‘defined benefit fund’. This means a superannuation fund in which a member has a defined benefit interest. This definition is included to improve the clarity of other provisions that rely on this term.

Clause 2B of Schedule 1AA is a new provision that clarifies the operation of the law in circumstances where there are two or more superannuation sub-funds in relation to defined benefit members of a superannuation fund. The provision requires the separate application of Schedule 1AA for each superannuation sub-fund.

Clause 3 of Schedule 1AA generally replicates the operation of the corresponding provision in the 1997 Regulations with editorial updates. In the remake:

- subclause 3(1) replicates the corresponding provision in the 1997 Regulations; and
- subclause 3(2) updates the corresponding provision in the 1997 Regulations so that an actuary must certify that a member belongs to more than one benefit category on the same day if the actuary is satisfied that the amount of notional taxed contributions to be reported will be materially different from the amount of notional taxed contributions that would have been reported had the member belonged to only one benefit category on each relevant day. In the remake, the actuary must certify if certain conditions are met, rather than refrain from doing so if certain conditions are not met (as in the former provision). This relies on the ‘necessary or convenient’ power in section 909-1 of the Act because it is ancillary to the compliance obligations of the superannuation fund to maintain adequate records and provide them when requested. This ensures that in the self-assessment regime of the taxation system, adequate records are maintained and claims can be substantiated.

##### **Division 2—Method: clause 4 of Schedule 1AA**

Clause 4 of Schedule 1AA generally replicates the operation of the corresponding provision in the 1997 Regulations with editorial updates.

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For subclause 4(1) of Schedule 1AA, the remake has updated:

- the definition of ‘defined benefit contribution’ to make it clear that this relates to an accruing member of a superannuation fund. The change is intended to improve the clarity of the definition and does not alter the substantive outcomes of the law; and
- the definition of ‘NTC’ by removing the part of the provision relating to the calculation of NTC where the member is a member of a constitutionally protected fund as this is no longer relevant for the Regulations. This is because NTCs have been calculated for members of constitutionally protected funds since 1 July 2017. The Regulations apply prospectively from commencement only, and any relevant application to previous income years will continue to be covered by the 1997 Regulations.

For subclause 4(2) of Schedule 1AA, while the underlying formula in the provision remains the same, the following updates have been made:

- ‘Sum of NEFC’ replaces the ‘T’;
- ‘Increased exit benefit adjustment amount’ replaces the ‘W’;
- ‘Category change or discretion adjustment amount’ replaces the ‘X’;
- ‘Governing rules change adjustment amount’ replaces the ‘Y’; and
- ‘Increased superannuation salary adjustment amount’ replaces the ‘Z’.

For subclause 4(3) of Schedule 1AA, while the underlying formula in the provision remains the same, the following updates have been made:

- ‘Superannuation salary amount’ replaces the ‘S’;
- ‘Number of days’ replaces the ‘D’; and
- ‘Member contributions amount’ replaces the ‘M’.

### **Part 2—New entrant rate: clauses 5 to 9 of Schedule 1AA**

Clause 5 of Schedule 1AA replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

Clause 6 of Schedule 1AA generally replicates the corresponding provision in the 1997 Regulations with editorial updates. In the remake, former subclause 6(2) of Schedule 1AA to the 1997 Regulations is instead included as a note. While this outcome was clear in the 1997 Regulations because the subclause was descriptive and not operational, this change simplifies and improves the clarity of the provision.

Clauses 7 to 9 of Schedule 1AA replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

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### **Part 3—Valuation parameters: clauses 10 to 19 of Schedule 1AA**

Clauses 10 to 14 of Schedule 1AA replicate the corresponding provisions in the 1997 Regulations.

Clauses 15 and 16 of Schedule 1AA replicates the corresponding provision in the 1997 Regulations with minor editorial updates.

Clauses 17 to 19 of Schedule 1AA replicate the corresponding provisions in the 1997 Regulations.

### **Part 4—Exercise of discretion to pay a benefit greater than the benefit assumed in calculating the new entrant rate: clause 20 of Schedule 1AA**

Clause 20 of Schedule 1AA generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated to follow how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 20(a) is to be included in the formula in subclause 4(2).

For any other case, paragraph 20(b) of Schedule 1AA provides that the amount is zero.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

### **Part 5—Member has changed benefit category: clause 21 of Schedule 1AA**

Clause 21 of Schedule 1AA generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated consistent with how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 21(1)(a) is to be included in the formula in subclause 4(2).

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

Subclause 21(2) of Schedule 1AA is updated to specify ‘decrement and other parameters’ set out in Part 3.

### **Part 6—Governing rules have changed: clause 22 of Schedule 1AA**

Clause 22 of Schedule 1AA generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated consistently with how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 22(1)(a) is to be included in the formula in subclause 4(2).

For any other case, paragraph 22(1)(b) of Schedule 1AA provides that the amount is zero.

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These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

Subclause 22(2) of Schedule 1AA is updated to specify ‘decrement and other parameters’ set out in Part 3.

### **Part 7—Non-arm’s length increase in superannuation salary: clause 23 of Schedule 1AA**

Clause 23 of Schedule 1AA generally replicates the corresponding provision in the 1997 Regulations with editorial updates. The provision is updated consistently with how the calculations have been restructured. In particular, the remake simplifies the provision by making it clear that the amount in paragraph 23(1)(a) is to be included in the formula in subclause 4(2).

For any other case, paragraph 23(1)(b) of Schedule 1AA provides that the amount is zero.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

Subclause 23(2) of Schedule 1AA is updated to specify ‘decrement and other parameters’ set out in Part 3.

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### **Schedule 1B—Valuation factors**

Clauses 1 and 2 of Schedule 1B replicate the corresponding provisions in the 1997 Regulations with minor editorial updates.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

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### **Schedule 1C—Farm management deposits – statements to be read by depositors**

#### **Part 1—Statements**

Clause 1 of Schedule 1C generally replicates the operation of former clauses 1 and 2 in Part 1 of Schedule 1C to the 1997 Regulations with editorial updates. In the remake, the relevant corresponding provisions have been restructured and renumbered. To improve clarity and consistency in the numbering of the provisions:

- subclause 1(1) specifies that the statements are made for the purpose of paragraph 393-20.02(a);
- subclause 1(2) replicates former clause 1 in Part 1 of Schedule 1C to the 1997 Regulations;
- subclause 1(3) specifies that the first statement can only be used to apply to an FMD provider to make a farm management deposit if the FMD provider is an authorised deposit-taking institution; and
- subclause 1(4) replicates the former clause 2 in Part 1 of Schedule 1C to the 1997 Regulations.

The changes are intended to improve clarity and consistency in numbering but not alter the scope or substantive operation of the provisions.

#### **Part 2—Required statements**

Clause 2 of Schedule 1C generally replicates the operation of former clauses 1 to 4 in Part 2 of Schedule 1C to the 1997 Regulations with editorial updates. In the remake, the relevant corresponding provisions have been restructured and renumbered to improve clarity and consistency in the numbering of the provisions. In particular:

- subclause 2(1) specifies that the statements are made for the purpose of paragraph 393-20.02(b); and
- subclause 2(2) replicates the operation of former clauses 1 to 4 in Part 2 of Schedule 1C to the 1997 Regulations.

The changes are intended to improve clarity and consistency in numbering but not alter the scope or substantive operation of the definition.

#### **Part 3—Additional information**

Clause 3 of Schedule 1C generally replicates the operation of former clauses 1 to 8 in Part 3 of Schedule 1C to the 1997 Regulations with editorial updates. In the remake, the relevant corresponding provisions have been restructured and renumbered. To improve clarity and consistency in the numbering of the provisions:

- subclause 3(1) specifies that for the purposes of paragraph 393-20.02(c), a form used to apply to an FMD provider to make a farm management deposit

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must include statements setting out the additional information referred to in subclauses (2) to (8); and

- subclauses 3(2) to (8) replicate the operation of former clauses 1 to 8 in Part 3 of Schedule 1C to the 1997 Regulations.

The changes are intended to improve clarity and consistency in numbering but not alter the scope or substantive operation of the provisions.



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### **Schedule 2—Translation of currency amounts – rules and other requirements**

#### **Part 1—Rules and requirements for item 12 of the table in subsection 960-50(6) of the Act**

Clauses 1, 2 and 3 of Schedule 2 replicate former clauses 1.1, 1.2 and 1.3 of Schedule 2 to the 1997 Regulations respectively, with minor editorial updates.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

#### **Part 2—Translation of foreign currency amounts into Australian currency – rules and requirements for item 11A of the table in subsection 960-50(6) of the Act**

Clause 4 replicates former clause 2.1 of Schedule 2 to the 1997 Regulations with minor editorial updates.

These updates are intended to improve clarity but not alter the scope or substantive operation of the provisions.

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### **Schedule 3—Approved stock exchanges**

Clause 1 of Schedule 3 replicates the operation of the corresponding table in former Schedule 5 to the 1997 Regulations with minor updates to reflect changes to the names and the merging of stock exchanges over time.

Former Schedule 4 to the 1997 Regulations has been repealed. The table listing constitutionally protected superannuation funds in State legislation in former Schedule 4 to the 1997 Regulations has been integrated into the meaning of ‘constitutionally protected fund’ in paragraph 995-1.03.

The changes are intended to improve clarity and consistency in numbering but not alter the scope or substantive operation of the definition.