

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Superannuation, Financial Services and Financial Technology

Australian Charities and Not-for-profits Commission Act 2012

Commonwealth Places (Mirror Taxes) Act 1998

Competition and Consumer Act 2010

Corporations Act 2001

Income Tax Assessment Act 1936

National Consumer Credit Protection Act 2009

Petroleum Resource Rent Tax Assessment Act 1987

Retirement Savings Accounts Act 1997

Superannuation Guarantee (Administration) Act 1992

Superannuation Industry (Supervision) Act 1993

Tax Agent Services Act 2009

*Treasury Laws Amendment (Miscellaneous and Technical Amendments)
Regulations 2020*

Sections 200-5 of the *Australian Charities and Not-for-profits Commission Act 2012*, section 25 of the *Commonwealth Places (Mirror Taxes) Act 1998*, section 51AE of the *Competition and Consumer Act 2010*, section 1364 of the *Corporations Act 2001*, section 266 of the *Income Tax Assessment Act 1936*, section 329 of the *National Consumer Credit Protection Act 2009*, section 114 of the *Petroleum Resource Rent Tax Assessment Act 1987*, section 200 of the *Retirement Savings Account Act 1997*, section 80 of the *Superannuation Guarantee (Administration) Act 1992*, section 353 of the *Superannuation Industry (Supervision) Act 1993* and section 70-55 of the *Tax Agent Services Act 2009* (the Authorising Acts) provide 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 *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020* (the Regulations) is to make minor and technical amendments to regulations in the Treasury portfolio, including to tax laws, corporations laws, superannuation laws, laws relating to consumer protections, and credit laws. The amendments are part of the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, correct unintended outcomes and improve the quality of laws. The

process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax law changes. It has since been expanded to all Treasury legislation.

The Regulations amend various Treasury portfolio regulations to make minor and technical changes that correct typographical errors and unintended outcomes, increase out of date thresholds, and repeal inoperative provisions. These changes ensure that the Treasury regulations operate as intended.

Details of the Regulations are set out in Attachment A.

The Authorising Acts specify no 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*.

Schedule 2, items 1 to 11 commence on the later of the day after the Regulations are registered and the day that the *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2019* commences. However Schedule 2, items 1 to 11 do not commence at all if the *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2019* does not commence.

Schedule 2, item 12 commences on the later of the day after the Regulations are registered and the day that the Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Minor and Technical Amendments commences. However Schedule 2, item 12 does not commence at all if the Treasury Laws Amendment (Measures for a later sitting) Bill 2020: Minor and Technical Amendments does not commence.

All other items in the Regulations commence on the day after the Regulations are registered.

Details of the Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2020

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020* (the Regulations).

Section 2 – Commencement

Section 2 of the Regulations sets out the commencement details of the Regulations.

Section 3 – Authority

Section 3 of the Regulations state the Regulations are made under:

- the *Australian Charities and Not-for-profits Commission Act 2012*;
- the *Commonwealth Places (Mirror Taxes) Act 1998*;
- the *Competition and Consumer Act 2010*;
- the *Corporations Act 2001*;
- the *Income Tax Assessment Act 1936*;
- the *National Consumer Credit Protection Act 2009*;
- the *Petroleum Resource Rent Tax Assessment Act 1987*;
- the *Retirement Savings Accounts Act 1997*;
- the *Superannuation Guarantee (Administration) Act 1992*;
- the *Superannuation Industry (Supervision) Act 1993*; and
- the *Tax Agent Services Act 2009*.

Section 4 – Schedules

Section 4 of the Regulations states that that items in the Schedules to the Regulations amend or repeal each instrument that is specified in the Schedules, and have effect according to their terms.

Schedule 1 – Amendments

Items 1 to 3 – Amendments to the *Australian Charities and Not-for-profits Commission Regulation 2013*

Item 2 inserts section 60.17 into the *Australian Charities and Not-for-profits Commission Regulation 2013* to allow the following entities to undertake audits or reviews of the annual financial reports of medium or large registered entities:

- the Auditor-General of the Commonwealth;

- the Auditor-General of a State or Territory; or
- an individual to whom the Auditor-General of the Commonwealth or of a State or Territory delegates the function of conducting an audit or the power to conduct an audit.

This amendment recognises that a number of registered entities, such as universities, are audited by the relevant office of the State or Territory Auditor-General. Therefore, this amendment aligns medium or large ACNC entities with how similarly sized entities are currently audited.

Item 1 makes a consequential amendment to section 60.1 of the *Australian Charities and Not-for-profits Commission Regulation 2013* to reflect that new Subdivision 60-BA is made for the purposes of paragraph 60-30(1)(d) of the *Australian Charities and Not-for-profits Commission Act 2012*, rather than for the purposes of subsection 60-15(1) of that Act.

Item 3 repeals table item 4 of the table in subsection 60.30(2) of the *Australian Charities and Not-for-profits Commission Regulation 2013*. Item 4 contains the accounting standard ‘AASB 1031, *Materiality*’, which is redundant as it has been incorporated into ‘AASB 108, *Accounting Policies, Changes in Accounting Estimates and Errors*’. The latter standard is already included in table item 3 of the table in subsection 60.30(2).

Item 4 – Amendment to the *Commonwealth Places (Mirror Taxes) Regulations 2000*

Item 4 amends table item 2 of the table in regulation 4 of the *Commonwealth Places (Mirror Taxes) Regulations 2000* to remove the reference to the *Land Tax Act 1958* (Vic). Regulation 4 prescribes a list of legislation as ‘State taxing law’ for the purposes of section 3 of the *Commonwealth Places (Mirror Taxes) Act 1998*. The *Land Tax Act 1958* (Vic) was repealed in full by the Victorian Government in 2006 and is therefore no longer prescribed. This amendment repeals the redundant reference.

Items 5 and 6 – Amendments to the *Competition and Consumer (Industry Code – Franchising) Regulations 2014*

Items 5 and 6 amend Annexure 2 of Schedule 1 to the *Competition and Consumer (Industry code – Franchising) Regulation 2014* to update two out of date web addresses. Annexure 2 is an information statement for prospective franchisee’s that is required to be given to them by the franchisor as per subclause 11(1) of the *Competition and Consumer (Industry code – Franchising) Regulation 2014*. The amendment updates the web addresses to the current websites.

Items 7 to 16 – Amendments to the *Corporations Regulations 2001*

Item 7 updates references in subparagraph (a)(ii) of the definition of *medical indemnity insurance product* in subregulation 1.0.02(1) of the *Corporations Regulations 2001*. The amendments remove the reference to the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003*. As the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* were repealed and replaced in 2020, these amendments remove the specific reference to the name of the regulations and instead ensures the provision refers to the regulations

as made under the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*. These amendments will prevent the need to amend the name of the regulations should the name of the regulations change in the future.

Item 8 prescribes contracts, agreements or arrangements that are for reinsurance or retrocession are *not* subject to the stay in section 451E of the *Corporations Act 2001*. This ensures that the provision operates as originally intended and is consistent with the existing exemptions from the operation of the stay relating to securities and financial products.

Item 9 corrects the reference in the lodging of a notice of resolution with the Registrar under paragraph 446A(2)(b) of the *Corporations Act 2001* to refer to a business name, rather than a trading name.

Regulation 7.1.22AA sets out conditions that must be satisfied for a derivative to be considered a contract for difference.

Item 10 amends subregulation 7.1.22AA(3) of the *Corporations Regulations 2001* to make it clear that the requirement is for the derivative to satisfy all of the factors in subregulation 7.1.22AA(3) for it to be defined as a ‘contract for difference’, and not just some of the factors.

Item 11 adds the Bank of England and the Financial Conduct Authority of the United Kingdom to the list of persons or bodies in subregulation 7.5A.150B(1) of the *Corporations Regulations 2001*. This amendment allows the Bank of England and the Financial Conduct Authority of the United Kingdom to request derivative trade data from a derivative trade repository licensee if the requirements in subregulations 7.5A.150B(2) to (6) are satisfied. These requirements broadly ensure the request for information is appropriate (for example, the request must relate to the performance of the body’s functions or exercise of its powers).

The Monetary Authority of Singapore is already prescribed as a relevant person or body in subregulation 7.5A.150B of the *Corporations Regulations 2001*.

Prior to the withdrawal of the United Kingdom from the European Union, the Bank of England and the Financial Conduct Authority of the United Kingdom were able to request derivative trade data under regulation 7.5A.150A of the *Corporations Regulations 2001*. Item 11 is therefore a consequential amendment following the withdrawal of the United Kingdom from the European Union.

Item 12 is a consequential amendment as a result of item 11 allowing multiple persons or bodies to request derivative trade data under regulation 7.5A.150B of the *Corporations Regulations 2001*.

Items 13 to 15 amends the *Corporations Regulations 2001* by prescribing two new forms in Schedules 1 and 2: Form 5250 ‘Notice to demonstrate why disqualification should not occur’ and Form 5251 ‘Notice of disqualification from management corporations’.

Section 206GAA of the *Corporations Act 2001* (the Act) provides the Australian Securities and Investments Commission (ASIC) with the power to disqualify a person from managing corporations if certain statutory prerequisites are met.

Subparagraph 206GAA(1)(b)(i) of the Act requires ASIC to first provide the disqualification candidate with a notice in the *prescribed form* requiring them to demonstrate why they should not be disqualified. The amendments prescribe a form for this purpose (Form 5250).

If ASIC decides to disqualify a person under section 206GAA, ASIC must serve a notice in the *prescribed form* on the person advising them of the disqualification. The amendments prescribe a form for this purpose (Form 5251).

Item 16 amends regulation 7003 of Schedule 7 to the *Corporations Regulations 2001* to remove the reference to ANL Limited. ANL legislation was repealed by the *ANL Legislation Repeal Act 2019*, and therefore, is no longer in force. This is a consequential amendment to remove the reference to ANL Limited.

Item 17 – Amendment to the Income Tax Assessment (1936 Act) Regulation 2015

Item 17 amends table item 5 of the table in subsection 6(3) of the *Income Tax Assessment (1936 Act) Regulation 2015* to remove countries that Operation Okra has ceased operating in. These countries are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Montenegro, Poland and Romania. This amendment ensures that the list which specifies where Operation Okra is operating is up-to-date in the regulation.

Items 18 to 31 – Amendments to the National Consumer Credit Protection Regulations 2010

Items 18 to 31 make amendments to correct referencing errors to a number of provisions in the *National Consumer Credit Protection Regulations 2010* as a result of changes made by the *Treasury Laws Amendment (2018 Measures No. 2) Act 2020*.

In particular, there are multiple references in the *National Consumer Credit Protection Regulations 2010* to provisions of the *National Consumer Credit Protection Act 2009* which require updating. These are:

- References to paragraph 110(c) of the *National Consumer Credit Protection Act 2009* are substituted with references to ‘for the purposes of paragraph 110(1)(c)’ of that Act (items 20, 25, 27, 29, 30 and 31, regulations 16, 23D(4), 24(10), 25A, 25B, 25C, 25D, 25E, 25F, 25G(1), 25H(1), 25I(1) and 25J(1) of the *National Consumer Credit Protection Regulations 2010*);
- References to paragraph 110(a) of *National Consumer Credit Protection Act 2009* are substituted with references to paragraph 110(1)(a) of that Act (items 18, 22 and 24, subregulations 10(5), 20(1), 21(1), 22(1), 23(1), 23A(1), 23B(1), 23C(1) and 23D(1) of the *National Consumer Credit Protection Regulations 2010*);
- References to paragraphs 110(b) and (c) of the *National Consumer Credit Protection Act 2009* are substituted with references to paragraphs 110(1)(b) and (c) of that Act (item 26, subregulation 24(1) of the *National Consumer Credit Protection Regulations 2010*);
- A reference to paragraph 110(b) of the *National Consumer Credit Protection Act 2009* is substituted with references to paragraph 110(1)(b) of that Act (item 28, subregulation 25(1) of the *National Consumer Credit Protection Regulations 2010*); and

- References to paragraph 110(c) the *National Consumer Credit Protection Act 2009* is substituted with a reference to paragraph 110(1)(c) of that Act (items 19, and 21, the note in subregulation 13(2) and the note in regulation 16 of the *National Consumer Credit Protection Regulations 2010*).

Finally, item 23 makes a minor correction to relocate the definition of ‘relevant beneficiary’ contained at subsection 23(5) of the Regulations to the appropriate position, as determined on a letter-by-letter basis.

Items 32 to 63 – Amendments to the *Petroleum Resource Rent Tax Assessment Regulation 2015*

Items 32 to 60 and item 62 make consequential amendments to the *Petroleum Resource Rent Tax Assessment Regulation 2015* following the enactment of the *Treasury Laws Amendment (2019 Petroleum Resource Rent Tax Reforms No. 1) Act 2019*. Schedule 2 to that Act removed onshore petroleum projects from the scope of the *Petroleum Resource Rent Tax Assessment Act 1987*.

Items 32 to 60 and item 62 repeal provisions in the *Petroleum Resource Rent Tax Assessment Regulation 2015* that are redundant as a result of removing onshore petroleum projects from the scope of the *Petroleum Resource Rent Tax Assessment Act 1987*. This includes, for example, removing from the *Resource Rent Tax Assessment Regulation 2015*:

- all references to ‘onshore petroleum project’ and ‘Schedule 2 to the Act’; and
- some references to ‘project natural gas’ and ‘natural gas’.

Item 63 provides that these amendments apply to the financial years commencing on 1 July 2019 and later financial years. This is consistent with the application provision for the amendments in Schedule 2 to the *Treasury Laws Amendment (2019 Petroleum Resource Rent Tax Reforms No. 1) Act 2019* and reflects that onshore petroleum projects are not subject to the petroleum resource rent tax in relation to those financial years.

Item 63 also makes clear that despite the repeal of paragraph 47(c), the provision continues to apply to a decision made by the Commissioner under subsection 23(2) (about comparable uncontrolled prices) that relates to an assessment for a period ending before 1 July 2019. Subject to the requirements in the *Taxation Administration Act 1953*, this preserves the right of a taxpayer to object, on or after 1 July 2019, to an assessment made of assessable petroleum receipts derived or taken to be derived in the period ending before 1 July 2019.

Item 61 contains an additional amendment that clarifies the operation of section 50 of the *Petroleum Resource Rent Tax Assessment Regulation 2015*. Section 50 provides that participants in an integrated GTL operation existing before 2 May 2010 may elect to apply a modified residual pricing method. Item 61 amends section 50 to clarify how the provision works if one or more new participants are later added to an integrated GTL operation.

New subsection 50(3) of the *Petroleum Resource Rent Tax Assessment Regulation 2015* provides that if there are new participants in an integrated GTL operation, an

existing election continues in force for the participants who made it, and any new participant is taken to have made the election at the time the new participant is added to the operation. That is, new participants are bound by the election made by the existing (and former) participants in the operation to apply the modified residual pricing method. This outcome is consistent with the intention of the existing provision—that all participants in the operation must apply the same pricing method.

New subsection 50(3) applies in relation to elections made before, on or after the commencement of the Regulations. This ensures the amendment applies to existing elections made under section 50.

Items 64 to 70 – Amendments to the *Retirement Savings Accounts Regulations 1997* and *Superannuation Industry (Supervision) Regulations 1994*

Items 64 to 66 and 70 ensure that permanent residents of New Zealand are eligible for early release of their superannuation on compassionate grounds relating to the coronavirus known as COVID-19 in accordance with the same policy settings that apply for Australian citizens, permanent residents of Australia and New Zealand citizens. That is, the same criteria for eligibility applies and permanent residents of New Zealand may apply to have up to two payments – one for an application made during the 2019-20 financial year and another for an application made during the 2020-21 financial year.

These amendments apply retrospectively from 25 March 2020, when these early release of superannuation provisions were introduced for Australian citizens, permanent residents of Australia and New Zealand citizens by Schedule 13 to the *Coronavirus Economic Response Package Omnibus Act 2020*. The amendments do not disadvantage any person as the amendments ensure the provisions operate as originally intended, consistent with public guidance on this policy and the Australian Taxation Office’s administration of the provisions. It remains voluntary for an eligible person to apply for early release of their superannuation.

Item 67 prescribes a time by which annual accounts and statements must be prepared, in respect of a superannuation entity that is a self-managed superannuation fund, in accordance with section 35B of the *Superannuation Industry (Supervision) Act 1993*. No time is currently prescribed by the *Superannuation Industry (Supervision) Regulations 1994*.

The new regulation requires those accounts and statements to be prepared at least 45 days before the day by which section 35D of that Act requires a return to be lodged for the entity. This is the same day by which an approved SMSF auditor must be appointed under subsection 35C(1) of that Act.

Item 70 inserts a transitional provision to provide that the new timing requirement will apply to accounts and statements prepared in accordance with section 35D of that Act in respect of any year of income that ends after the commencement of the amendment. This includes the year of income in which the amendment commenced.

Items 68 and 69 updates the title of a code of ethics prescribed for approved SMSF auditors for the purposes of paragraph 128F(d) of the *Superannuation Industry (Supervision) Act 1993*. Currently, the ‘APES 110 Code of Ethics for Professional

Accountants’ is prescribed for the purposes of paragraph 128F(d) of that Act. The latest version of this code of ethics has been retitled to the ‘APES 110 Code of Ethics for Professional Accountants (including Independence Standards)’. This item amends the *Superannuation Industry (Supervision) Regulations 1994* to reflect the new title.

Item 71 – Amendment to the Tax Agent Services Regulations 2009

Item 71 inserts a new regulation into the *Tax Agent Services Regulations 2009* to allow recognised professional associations to surrender their recognition with the Tax Practitioners Board.

Presently, recognised professional associations who want to surrender their recognition with the Tax Practitioners Board are subject to a formal investigation by the Board in order to have their association terminated. This process is onerous for both parties and comes with unnecessary costs as the association is merely seeking to voluntarily surrender its recognition.

Schedule 2 – Amendments with other commencements

Items 1 to 11 – Amendments to the Corporations Regulations 2001

Items 1 to 11 make consequential amendments to the *Corporations Regulations 2001* as a result of amendments to be made by the Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019. This Bill will implement a narrow referral of powers from Western Australia by introducing Part VIIC in the *Family Law Act 1975*, which applies specifically to Western Australian de facto couples who wish to split their superannuation interests. Part VIIC is broadly equivalent to Part VIIB of the *Family Law Act 1975*, which contains superannuation splitting provisions that apply to married and de facto couples in other jurisdictions.

The amendments ensure the *Corporations Regulations 2001* apply to Western Australian de facto couples in the same way as they currently apply for de facto couples in other jurisdictions. Specifically, the amendments will ensure that any reference to definitions in Part VIIB of the *Family Law Act 1975* in the *Corporations Regulations 2001* will also reference equivalent definitions in the new Part VIIC. The amendments also update provisions that refer to provisions in Part VIIB to insert references to equivalent Part VIIC provisions.

Items 10 and 11 also make consequential amendments to the *Corporations Regulations 2001* as a result of amendments made by the *Civil Law and Justice Legislation Amendment Act 2018*. The *Civil Law and Justice Legislation Amendment Act 2018* renumbered the *Family Law Act 1975*. This included changing the number of section 90MJ to 90XJ and the number of section 90MT to 90XT. These amendments update references to these sections in the *Corporations Regulations 2001*.

Item 12 – Amendment to the Superannuation Guarantee (Administration) Regulations 2018

Item 12 repeals subsection 12A(3) of the *Superannuation Guarantee (Administration) Regulations 2018* as the amendment to subsection 27(2) of the *Superannuation Guarantee (Administration) Act 1992* in item 65 of the Treasury Laws Amendment

(Measures for a later sitting) Bill 2020: Minor and Technical Amendments: Minor and Technical Amendments Bill makes this provision redundant. The amendment to subsection 27(2) of the *Superannuation Guarantee (Administration) Act 1992* provides that if the amount of salary or wages that remains after reducing any salary or wages that are excluded under subsection 27(1) is less than \$450 in a calendar month, then the remaining amount is also excluded salary or wages under subsection 27(2). This amendment commences at the same time as amendment to subsection 27(2) of the *Superannuation Guarantee (Administration) Act 1992*.