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TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL  
2021: MISCELLANEOUS AND TECHNICAL AMENDMENTS

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# **Chapter 1**

## ***Miscellaneous and technical amendments***

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### **Outline of chapter**

1.1 Schedule 1 makes a number of miscellaneous and technical amendments to various laws in the Treasury portfolio. These amendments are part of the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.

1.2 These amendments make minor and technical changes to correct typographical and numbering errors, repeal inoperative provisions, remove administrative inefficiencies, address unintended outcomes, and ensure that the law gives effect to the original policy intent.

### **Context of amendments**

1.3 Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, correct unintended outcomes and generally improve the quality of laws. Making such amendments gives priority to the care and maintenance of Treasury portfolio legislation.

1.4 The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which was appointed to examine how to reduce delays in the enactment of tax legislation and improve the quality of tax law changes. It has since been expanded to all Treasury portfolio legislation.

### **Summary of new law**

1.5 These minor and technical amendments address technical deficiencies and legislative uncertainties in various Treasury laws by:

- correcting spelling and typographical errors
- fixing incorrect legislative references
- reducing unnecessary red tape
- addressing unintended outcomes
- adopting modern drafting practices
- enhancing readability and administrative efficiency; and

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- repealing redundant and inoperative provisions.

## Detailed explanation of new law

### Part 1 – Amendments commencing the day after Royal Assent

#### *New Zealand auditors*

1.6 Sections 324BB(5), 1280(4) and 1292(1)(a)(iii) of the *Corporations Act 2001* are amended so that a firm is able to be appointed as auditor of a company or registered scheme if at least one member of the firm is a registered company auditor who is ordinarily resident in New Zealand in addition to being ordinarily resident in Australia. [Schedule 1, items 1, 2, and 3, sections 324BB(5), 1280(4) and 1292(1)(a)(ii) of the *Corporations Act 2001*]

1.7 Currently a firm can only be appointed as auditor if at least one member of the firm is ordinarily resident in Australia. This change is in line with the policy intent of the *Trans-Tasman Mutual Recognition Act 1997* which harmonises regulation in regards to goods and occupations between Australia and New Zealand.

#### *Country by country reporting*

1.8 Section 815-355(3)(a)(ii) of the *Income Tax Assessment Act 1997* is amended to clarify that that a country by country (CBC) reporting entity is to provide the Commissioner a statement in relation to an income year, on the global operations and the pricing policies of other members of any CBC reporting group that the CBC reporting entity was a member of during the income year to which the statement relates to rather than the previous income year. [Schedule 1, item 4, section 815-355(3)(a)(ii) of the *Income Tax Assessment Act 1997*]

1.9 This amendment applies to statements required to be provided to the Commissioner in relation to income years starting on or after 1 July 2020. [Schedule 1, item 5]

#### *Recovery of overpayments*

1.10 Section 24NAA is inserted into Part 4B of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The section allows the Commissioner of Taxation to, in certain circumstances, recover amounts overpaid under Part 4B. [Schedule 1, item 6, section 24NAA of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*]

1.11 In particular, if the Commissioner makes a payment under Part 4B and it transpires that the amount paid exceeds the amount properly payable, the Commissioner may recover the excess from the superannuation provider whom the payment was made or, in the case the

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payment was transferred to another fund, the superannuation provider for the other fund.

1.12 However, the Commissioner cannot recover the excess from the superannuation provider for a fund if the fund does not hold an amount attributable to the overpayment.

1.13 Section 24NAA applies in relation to the recovery of overpayments on or after the commencement of these amendments, whether the overpayment occurred before, on or after that commencement. [*Schedule 1, item 7*]

1.14 Section 24NAA(8) makes apparent that the notice in section 24NAA(4)(a) is not a legislative instrument. The notice in section 24NAA(4)(a) is not a legislative instrument within the meaning of section 8(1) of the *Legislation Act 2003*.

### ***Consumer protections***

1.15 Sections 12DE and 12DN of the *Australian Securities and Investments Commission Act 2001* are amended to substitute references to ‘sale or grant, or the possible sale or grant’ with ‘supply, or the possible supply.’ These sections relate to consumer protections on offers of rebates, gifts and prizes, and where the consumer protection provisions do not apply. These changes make the terminology consistent with other consumer protection provisions in the *Australian Securities and Investments Commission Act 2001* and prevents the scope of sections 12DE and 12DN from being unintentionally narrowed. [*Schedule 1, items 8, 9, 10, 11, 12, 13 and 14, sections 12DE(1)(b)(iii), 12DE(2A)(b)(iii), 12DE(3A) 12DN(4), and 12DN(4A) of the Australian Securities and Investments Commission Act 2001*]

### ***Civil penalties***

1.16 Section 12GXB of the *Australian Securities and Investments Commission Act 2001* is amended to correct a drafting error which misdescribed the payment period for infringement notices. The amendment provides that the payment period begins on the day after the infringement notice is given, rather than the day on which the infringement notice is given. [*Schedule 1, item 15, section 12GXB(1)(h) of the Australian Securities and Investments Commission Act 2001*]

1.17 Section 12GXC of the ASIC Act is amended to correct a provision affected by a drafting error misdescribing the payment period for infringement notices where the Australian and Securities Investment Commission refuses to make an arrangement for the notice to be paid in instalments. The amendment ensures the payment period ends on the latest of the options listed in section 12GXC(5)(a) to (c), rather than the earliest. [*Schedule 1, items 16, 17 and 18, section 12GXC of the Australian Securities and Investments Commission Act 2001*]

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1.18 Section 1317DAP of the *Corporations Act 2001* is amended to correct a drafting error which misdescribed the payment period for infringement notices. The amendment provides that the payment period begins on the day after the infringement notice is given, rather than the day on which the infringement notice is given. [*Schedule 1, item 19, section 1317DAP(1)(h) of the Corporations Act 2001*]

1.19 Section 1317DAQ(5) of the *Corporations Act 2001* is amended to correct a provision affected by another drafting error misdescribing the payment period for infringement notices where the Australian Securities and Investment Commission refuses to make an arrangement for the notice to be paid in instalments. The amendment ensures the payment period ends on the latest of the options listed in sections 1317DAQ(5)(a) to (c), rather than the earliest. [*Schedule 1, items 20, 21, and 22, section 1317DAQ of the Corporations Act 2001*]

1.20 Section 75Y of the *Insurance Contracts Act 1984* is amended to correct a drafting error which misdescribed the payment period for infringement notices. The amendment provides that the payment period begins on the day after the infringement notice is given, rather than the day on which the infringement notice is given. [*Schedule 1, item 23, section 75Y(1)(h) of the Insurance Contracts Act 1984*]

1.21 Section 75Z of the *Insurance Contracts Act 1984* is amended to correct a provision affected by another drafting error misdescribing the payment period for infringement notices where the Australian Securities and Investments Commission refuses to make an arrangement for the notice to be paid in instalments. The amendment ensures the payment period ends on the latest of the options listed in sections 75Z(5)(a) to (c), rather than the earliest. [*Schedule 1, items 24, 25 and 26, section 75Z of the Insurance Contracts Act 1984*]

1.22 Section 288L of the *National Consumer Credit Protection Act 2009* is amended to correct a drafting error which misdescribed the payment period for infringement notices. The amendment provides that the payment period begins on the day after the infringement notice is given, rather than the day on which the infringement notice is given. [*Schedule 1, item 27, section 288L(1)(h) of the National Consumer Credit Protection Act 2009*]

1.23 Section 288M(5) of the *National Consumer Credit Protection Act 2009* is amended to correct a provision affected by another drafting error misdescribing the payment period for infringement notices where the Australian Securities and Investments Commission refuses to make an arrangement for the notice to be paid in instalments. The amendment ensures the payment period ends on the latest of the options listed in sections 288M(5)(a) to (c), rather than the earliest. [*Schedule 1, items 28, 29 and 30, section 288M of the National Consumer Credit Protection Act 2009*]



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### ***Annual turnover***

1.24 The *Treasury Legislation Amendment (Repeal Day) Act 2015* replaced the concept of ‘connected with Australia’ with ‘connected with the indirect tax zone’ in the *A New Tax System (Goods and Services Tax) Act 1999*. This means terminology is inconsistent between the *A New Tax System (Goods and Services Tax) Act 1999* and the *Competition and Consumer Act 2010*.

1.25 The amendments align terminology used in the *A New Tax System (Good and Services Tax) Act 1999* and in the definition of “annual turnover” in the *Competition and Consumer Act 2010* by replacing ‘Australia’ with ‘the indirect tax zone’, ensuring the correct and up-to-date terminology is used. [Schedule 1, items 31, 32, 33 and 34, sections 45AB, 76(5)(e) and section 2(1) of Schedule 2 of the *Competition and Consumer Act 2010*]

1.26 Similar amendments have been made to the definition of “annual turnover” in the *Corporations Act 2001*, *Insurance Contracts Act 1984*, and *National Consumer Credit Protection Act 2009*. [Schedule 1, items 35 to 37, section 761A of the *Corporations Act 2001*, section 11(1) of the *Insurance Contracts Act 1984*, section 5(1) of the *National Consumer Credit Protection Act 2009*]

### ***Loss carry back choice***

1.27 Section 160-16 is inserted into Division 160 of the *Income Tax Assessment Act 1997* to clarify the mechanism through which an entity may change its loss carry back choice. [Schedule 1, item 39, section 160-16 of the *Income Tax Assessment Act 1997*]

1.28 A change of a loss carry back choice must be given to the Commissioner of Taxation in the approved form within the limited amendment period (as defined in section 170 of the *Income Tax Assessment Act 1936*) for an assessment for an income year.

1.29 A changed loss carry back choice applies as if it was always the entity’s choice. That is, it takes effect from the day the original choice was made.

1.30 The Commissioner of Taxation may amend an assessment at any time for the purposes of giving effect to a changed loss carry back choice. This includes, for example, amending the assessment for the income year for which the choice relates as well as any assessment for any subsequent income years that are effected. [Schedule 1, item 38, section 170(10AA) of the *Income Tax Assessment Act 1936*]

### ***Franking account balance***

1.31 Sections 205-15(1) and 219-15(2) of the *Income Tax Assessment Act 1997* are amended to ensure that a franking credit arises in circumstances where:

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- a franking debit arises because the entity or company receives a tax offset refund;
  - the entity or company's tax offset refund is subsequently reduced and the entity or company is liable to pay the Commonwealth the amount of the excess mentioned in section 172A(2) of the *Income Tax Assessment Act 1936*; and
  - the entity or company pays the amount of the excess.

*[Schedule 1, item 40 and 41, table item 4A of section 205-15(1) and table item 6A of section 219-15(2)]*

1.32 In these circumstances, the amount of the franking credit is the amount of the excess and the credit arises on the day on which the amount of the excess is paid.

1.33 The changes ensure an entity or company's franking account balance is restored to appropriately reflect the actual amount of the entity or company's tax offset refund.

1.34 Treasury is considering further adjustments to the draft law to ensure that the entity or company's franking account balance is restored to the appropriate amount.

### ***Protected information***

1.35 Division 3 of Part 7 of the *Foreign Acquisitions and Takeovers Act 1975* deals with confidentiality of information.

1.36 Protected information is defined in section 120 of the *Foreign Acquisitions and Takeovers Act 1975* to mean information obtained under and in accordance with the Act (with certain exceptions). Section 130 of the Act provides that a person does not have to disclose information to a court, tribunal, authority or person, except for the purposes of the Act.

1.37 Amendments are made to clarify that a court, tribunal, authority or person should not be able to share 'protected' information, except where the information is required for the purposes of the *Foreign Acquisitions and Takeovers Act 1975*. *[Schedule 1, item 42, section 130 of the Foreign Acquisitions and Takeovers Act 1975]*

### ***Extension of decision period***

1.38 Section 61 *Foreign Acquisitions and Takeovers Act 1975* provides the time limit for making decisions on exemption certificates. Currently, the Treasurer must make a decision before the end of a period prescribed by regulations (currently 30 days) or before the end of that period, the person requests in writing that the Treasurer extends the period.

1.39 An additional limb is added to clarify that the decision period can also be extended if, the Treasurer extends the decision period using

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the Treasurer's new power to extend the decision period by up to 90 days. [*Schedule 1, item 43, section 61(1)(b) of the Foreign Acquisitions and Takeovers Act 1975*]

1.40 The total period by which the Treasurer can extend the decision period is 90 days. However, multiple extensions may be made to reach the maximum 90 days. For example the Treasurer can extend the time period three times, each for 30 days before making a decision. [*Schedule 1, item 44, section 61A of the Foreign Acquisitions and Takeovers Act 1975*]

1.41 The Treasurer must provide a reason to the applicant for the extension.

1.42 The amendments enable the Treasurer to extend the decision period more efficiently where more time is required to consider the application for an exemption certificate. This is not uncommon in cases that are sensitive or significant, and a longer decision period is necessary to consult with Commonwealth, State or Territory bodies, to consider their expert input or develop bespoke conditions.

1.43 The natural justice hearing rule will not apply to decisions by the Treasurer to use this power. On balance this is appropriate, as it allows the Treasurer to balance the needs of the applicant with the potential harm to the national interest of rushing consideration of the application for an exemption certificate.

1.44 While the Treasurer is not required to consult with a person before extending the decision period, the person will still be afforded natural justice at other times in the decision making process, such as if the Treasurer will apply conditions to the exemption certificate.

1.45 Further, the Treasurer's new power is consistent with existing section 77A of the *Foreign Acquisitions and Takeovers Act 1975*, which provides for the time period for no objection notifications.

1.46 A consequential amendment is proposed to be made to the *Foreign Acquisitions and Takeovers Regulation 2015* to support the extensive of the decision period. This proposed amendment is being consulted on in the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021*.

1.47 The amendments apply in relation to an application for an exemption certificate made on or after the day of commencement. [*Schedule 1, item 45*]

### ***Temporary full expensing***

1.48 Existing section 40-157 of the *Income Tax (Transitional Provisions) Act 1997* is amended to clarify that, in working out the cost of a depreciating asset that is capital works for the purpose of calculating an entity's total cost of investment for the 2016-17 to 2018-19 income years, sections 40-45 and 40-215 of the *Income Tax Assessment Act 1997* are

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disregarded. This clarification ensures the investment test interacts appropriately with the existing provisions in Division 40 of the *Income Tax Assessment Act 1997*. The provision applies from the 2020 budget time (consistently with the temporary full expensing regime). [*Schedule 1, items 46 and 47, section 40-157 of the Income Tax (Transitional Provisions) Act 1997*]

## **Part 2 – Amendments commencing first day of the next quarter**

### ***Repeal of redundant provisions***

1.49 The following sections are repealed as these provisions are now redundant:

- sections 293-115(6) and (7) and 293-145(2) and (2A) of the *Income Tax Assessment Act 1997*; and
- section 133-130(3) and (4) of Schedule 1 to the *Taxation Administration Act 1953*.

[*Schedule 1, items 48 to 50, sections 293-115 and 293-145 of the Income Tax Assessment Act 1997 and section 133-130 of Schedule 1 to the Taxation Administration Act 1953*]

1.50 These provisions were originally designed to permit the retrospective operation of regulations made under the relevant sections. As a result of the *Legislative Instruments Act 2003* changing to the *Legislation Act 2003* in 2015, amendments were made to section 12 of the *Legislation Act 2003* to make clear that it only affects instruments that commence, rather than apply, before they are registered. As a result of the changes to section 12 of the *Legislation Act 2003* and the passage of time, these provisions are now redundant.

### ***GST free cars***

1.51 Section 38-510(1)(a) of *A New Tax System (Goods and Services Tax) Act 1999* requires that a person with a disability holds a current disability certificate issued by the Managing Director of the 'nominated company' in order to access the GST-free supply of a car. That company no longer issues disability certificates.

1.52 Section 38-510(1)(a) is amended to allow medical practitioners to issue a disability certificate for the purposes of section 38-510. [*Schedule 1, item 51, section 38-510 of the A New Tax System (Goods and Services Tax) Act 1999*]

1.53 The amendment ensures that disability certificates can continue to be issued, allowing the supply of GST free vehicles to those who meet the other eligibility requirements.

1.54 The definition of **officer** in section 195-1 is amended because it is redundant as a result of the amendment to section 38-510(1)(a). [*Schedule 1, item 52, section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999*]

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### ***Agents of covered entities***

1.55 Division 355 of Schedule 1 to the *Taxation Administration Act 1953* contains provisions to protect the confidentiality of taxpayer information. Section 355-25 provides that it is an offence for a tax officer to make a record of information or disclose protected information either to another entity (other than the primary entity or an entity specified in section 355-25(2)) or to a court or tribunal.

1.56 Entities specified in section 355-25(2)(a) to (f) include:

- a representative of an incapacitated entity where the taxpayer is the incapacitated entity;
- a legal personal representative (which includes an executor or administrator of a taxpayer that has died, the trustee of an estate of a taxpayer under a legal disability, or a person who holds a general power of attorney granted by the taxpayer);
- a guardian, where the taxpayer is a minor, has a mental incapacity; and
- a member of the same consolidated group or Multiple Entity Consolidated group.

1.57 Under the current provisions, a tax officer is unable to directly disclose confidential information about the taxpayer to a tax agent, a BAS agent or a legal practitioner of an entity listed above who represents the taxpayer.

1.58 Section 355-25(2) is amended to add provisions that provide that a covered entity to whom confidential information can be disclosed to includes the registered tax agent or BAS agent of another covered entity mentioned in sections 355-25(2)(c) to (f) or the legal practitioner representing those entities in relation to the affairs of the taxpayer. *[Schedule 1, item 53, section 355-25 of the Tax Administration Act 1953]*

1.59 The amendment of section 355-25 applies in relation to the making of a record or the disclosure of information occurring on or after the commencement of the , whether the information was acquired before, on or after that commencement. *[Schedule 1, item 54]*

### ***Deductible gift recipient***

1.60 Item 6.2.9 of section 30-55(2) is amended to update the former entity name of 'the Nature Foundation SA Incorporated' with 'the Nature Foundation Limited'. A consequential amendment has been made to table item 77A in section 30-315 *[Schedule 1, item 55 and 56, section 30-55 of the Income Tax Assessment Act 1997]*

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1.61 These amendments apply in relation to gifts or contributions made on or after 12 December 2019. This amendment will allow the entity to continue to receive tax deductible gifts. *[Schedule 1, item 57]*

***Expired deductible gift recipient***

1.62 A number of amendments have been made to repeal deductible gift recipient listings that have expired. *[Schedule 1, items 58, 59, 60, 61, 62, 63, 64 and 65, sections 30-25, 30-40, 30-50, 30-80, 30-105 and 30-315 of the Income Tax Assessment Act 1997]*

***Deductible gift recipient***

1.63 Item 12.2.2 of Section 30-100(2) is amended to reflect the change in the entity name from Australian Business Arts Foundation Ltd to Creative Partnerships Australia Ltd. *[Schedule 1, item 66, section 30-100 of the Income Tax Assessment Act 1997]*

1.64 This amendment will allow the entity to continue to receive tax deductible gifts. Consequential amendments have been made to the index in section 30-315 to update the entity's name. *[Schedule 1, items 67 and 68, section 30-315 of the Income Tax Assessment Act 1997]*

1.65 These amendments apply in relation to gifts or contributions made on or after 5 October 2020. *[Schedule 1, item 69]*

***Minor amendment***

1.66 Division 12 of the *Taxation Administration Act 1953* sets out the payments from which an entity must withhold an amount of pay as you go withholding tax. Subdivision 12-H sets out the circumstances in which a Managed Investment Trust must withhold an amount from a payment of its Australian sourced net income if the payment is made to an entity outside of Australia.

1.67 Under section 12-439 of the *Taxation Administration Act 1953* the Treasurer may, on application from an entity, declare that a facility is an approved economic infrastructure facility. An entity will not be required to withhold an amount from a payment if it is made from an approved economic infrastructure facility. Item 68 amends section 12-439(4) of the *Taxation Administration Act 1953* to clarify that the Treasurer may approve a facility if an application is made under section 12-439(3) rather than section 12-439(2). This amendment corrects a referencing error. *[Schedule 1, item 70, section 12-439 of the Tax Administration Act 1953]*

***Finance leases***

1.68 Existing section 705-56(1) of the *Income Tax Assessment Act 1997* modifies the operation of the consolidation tax cost setting rules when an entity that is the lessor or lessee under a lease of a depreciating

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asset joins a consolidated group, and the entity treats the lease as a finance lease under the accounting standards. Section 711-45(2A) of the *Income Tax Assessment Act 1997* makes a corresponding modification if the entity subsequently leaves the consolidated group.

1.69 From 1 January 2019, the new Accounting Standard for Leases (AASB 16) applies to introduce a single accounting model for lessees. The new standard requires a lessee to recognise assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value. A lessee no longer classifies leased assets or liabilities as an operating lease or a finance lease.

1.70 Amendments have been made to section 705-56(1) of the *Income Tax Assessment Act 1997* to expand the operation of the modified tax cost setting rule so that it is not limited to finance leases but applies to all leases where the joining entity is the lessor or lessee under a lease of a depreciating asset to which Divisions 40 applies. [*Schedule 1, items 71, 72 and 73, sections 705-25(5) (note 2), 705-56 (heading) and 705-56(1) of the Income Tax Assessment Act 1997*]

1.71 This change ensures there is consistency with the changes to AASB 16 to ensure that the provisions are not limited to finance leases.

1.72 Amendments have been made to section 711-45(2A) of the *Income Tax Assessment Act 1997* to reflect the corresponding modified tax cost setting rule if the entity subsequently leaves the consolidated group. [*Schedule 1, item 74, section 711-45(2A) (heading) of the Income Tax Assessment Act 1997*]

1.73 The amendments to expand the operation of the modified tax cost setting rules to all leases apply in relation to an entity that becomes a subsidiary member of a tax consolidated group or a multiple entry consolidated group on or after the day the Bill for this Act was introduced into the House of Representatives. [*Schedule 1, item 75*]

### ***Low pool value***

1.74 Section 328-180 (6) of the *Income Tax (Transitional Provisions) Act 1997* is amended to correct a typographical error and ensure the law refers to “low pool value” (rather than “low value pool”). [*Schedule 1, item 76, section 328-180 of the Income Tax (Transitional Provisions) Act 1997*]

## **Part 3 – Other amendments**

### ***Delegation***

1.75 Section 216 of the *Life Insurance Act 1995* is amended by inserting a new section to allow the Treasurer to delegate any of the Treasurer’s functions or powers under section 216 of the *Life Insurance Act*. Specifically, the amendment provides that the Treasurer can delegate any of the Treasurer’s functions or powers under section 216 of the *Life*

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*Insurance Act 1995* to either a non-corporate Commonwealth entity for which the Treasurer is the responsible Minister or to a member or staff member of such an entity. [Schedule 1, items 77 and 78, section 216 of the *Life Insurance Act 1995*]

1.76 Currently, the Treasurer authorises the Australian Securities and Investments Commission to exercise the Treasurer's functions or powers under section 216 of the *Life Insurance Act 1995*.

1.77 The amendment will allow the Treasurer to delegate the Treasurer's functions or powers under section 216 of the *Life Insurance Act 1995* to the Australian Securities and Investments Commission. This will provide administrative efficiencies and ensure that unclaimed money claims can continually be assessed and resolved without significant delays.

### ***KiwiSaver scheme***

1.78 Various amendments are made to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to ensure that New Zealand-sourced amounts held under the that Act are treated consistently with the rules in Part 12A of the *Superannuation Industry (Supervision) Regulations 1994*. Part 12A sets out matters to implement the *Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability*. [Schedule 1, items 82, 83, 84, 85, 86, 87, 88, 89, 99, 100 and 101, sections 8, 17, 20H, 20QF, 21E, 24G, 24NA and 49AA of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*]

1.79 The effect of the amendments is that amounts which include a New Zealand-sourced amount cannot be paid out under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to self-managed superannuation funds, funds which have not notified the Commissioner or, in certain circumstances, persons who do not satisfy the New Zealand eligibility age.

1.80 The amendments also require the Commissioner of Taxation to administer any money paid to them under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in a way that allows any New Zealand-sourced amount to be identified separately. This requirement applies in relation to money paid to the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* on or after the commencement of Division 2 of Part 3 of Schedule 1. [Schedule 1, items 102 and 103, section 49AA of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*]

1.81 Various amendments are made to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to ensure that amounts held by the Commissioner of Taxation under Part 3D of that Act can, consistent with forthcoming amendments provided by Part 1 of Schedule



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2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*, be paid to New Zealand KiwiSaver scheme providers. [*Schedule 1, items 90, 91, 92, 93, 94, 95, 96, 97 and 98, sections 22B, 22E and 22F of the Superannuation (Unclaimed Money and Lost Members) Act 1999*]

1.82 The amendments require the Commissioner of Taxation to pay amounts they hold under Part 3D of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of a person to a single KiwiSaver scheme provider if the Commissioner is satisfied, upon application in the approved form or on the Commissioner's own initiative, that the person has directed the Commissioner to do so and the matters prescribed by the regulations are satisfied.

1.83 The amendments apply in relation to payments of amounts made by the Commissioner of Taxation on or after the commencement of Division 2 of Part 3 of Schedule 1, regardless of when the amounts were received by the Commissioner. [*Schedule 1, item 103*]

1.84 Amendments are also made to ensure that the guide material in section 7 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is accurate. The amendments ensure the guide material indicates that the Commissioner of Taxation can pay amounts to KiwiSaver scheme providers. [*Schedule 1, items 79, 80 and 81, section 7 of the Superannuation (Unclaimed Money and Lost Members) Act 1999*]