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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Consultation) Bill 2021: Superannuation information for family law proceedings

Schedule 1—Amendments

Part 1—Main amendments

Family Law Act 1975

1 At the end of Division 5 of Part VIIIB

Add:

90XZJ Requests for Commissioner of Taxation to provide superannuation information

Application for superannuation information

(1) A person who is a party to property settlement proceedings:

(a) in the Federal Circuit and Family Court of Australia in relation to the person’s marriage or de facto relationship with another person; or

(b) in the Family Court of Western Australia in relation to the person’s marriage with another person;

may apply, in the approved form, to a Senior Registry official of that Court for that official to request the superannuation information of that other person (the ***other party***).

Request for superannuation information

(2) If a Senior Registry official of a Court receives an application from a person under subsection (1) for the superannuation information of the other party, the official may:

(a) request the Commissioner of Taxation to disclose that superannuation information for the purpose of those proceedings; and

(b) if the Commissioner of Taxation discloses that superannuation information to the official for the purpose of those proceedings—disclose the superannuation information to the following:

(i) that person and each lawyer of that person;

(ii) the other party and each lawyer of that other party;

for that person, other party or lawyer to make a record of, or disclose, for the purpose of those proceedings.

Note 1: Making a record of, or on‑disclosing, that superannuation information may be an offence unless it is for the purpose of those proceedings, see sections 355‑155 and 355‑175 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: Disclosing superannuation information for the purpose of those proceedings extends to disclosing the superannuation information to the trustee of an eligible superannuation plan as part of an application under section 90XZB for the purpose of those proceedings.

Approved form

(3) An application made by a person under subsection (1) is in the approved form if and only if:

(a) it is in the form approved in writing by the person prescribed by the Federal Circuit and Family Court of Australia (Division 1) Rules for the purposes of this paragraph; and

(b) it contains the information (including any declaration) that the form requires; and

(c) it is given in the manner required by the person prescribed for the purposes of paragraph (a) (which may include electronically).

(4) In this section:

***Senior Registry official***:

(a) of the Federal Circuit and Family Court of Australia—means the Registry Manager of that Court; or

(b) of the Family Court of Western Australia—means the Principal Registrar of that Court.

***superannuation information***, of a person, means information about the identity and value of each superannuation interest (within the meaning of the *Income Tax Assessment Act 1997*)held by the person.

Taxation Administration Act 1953

2 Subsection 355‑65(3) in Schedule 1 (after table item 8)

Insert:

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| 8A | a Senior Registry official (within the meaning of section 90XZJ of the *Family Law Act 1975*) of a court in response to that official’s request under that section | (a) is of superannuation information (within the meaning of that section); and  (b) is for the purpose of property settlement proceedings (within the meaning of that Act) in that court. |

3 Application of amendments

(1) The amendments of the *Family Law Act 1975* made by this Part apply in relation to the following proceedings at or after the commencement of this Part, whether the proceedings commenced before or after that commencement:

(a) property settlement proceedings in the Federal Circuit and Family Court of Australia; and

(b) property settlement proceedings, in relation to the parties to a marriage, in the Family Court of Western Australia.

(2) The amendments of the *Taxation Administration Act 1953* made by this Part apply in relation to records or disclosures of information made at or after the commencement of this Part, whether the information was obtained before, at or after the commencement of this Part.

Part 2—Other amendments

Family Law Act 1975

4 At the end of Division 5 of Part VIIIC

Add:

90YZY Requests for Commissioner of Taxation to provide superannuation information

Application for superannuation information

(1) A person who is a party to either of the following proceedings in the Family Court of Western Australia, in relation to the person’s de facto relationship with another person (the ***other party***):

(a) proceedings in relation to matters arising under this Part;

(b) proceedings under the *Family Court Act 1997* (WA) with respect to the property of the parties to the de facto relationship or either of them, if the person is considering bringing, or is a party to, related proceedings in relation to matters arising under this Part;

may apply, in the approved form, to the Principal Registrar of that Court for the Principal Registrar to request the superannuation information of that other party.

Request for superannuation information

(2) If the Principal Registrar of that Court receives an application from a person under subsection (1) for the superannuation information of the other party, the Principal Registrar may:

(a) request the Commissioner of Taxation to disclose that superannuation information for the purpose of all of the following proceedings (the ***relevant proceedings***) in relation to the person’s de facto relationship with the other party:

(i) any proceedings in relation to matters arising under this Part;

(ii) any proceedings under the *Family Court Act 1997* (WA) with respect to the property of the parties to the de facto relationship or either of them, if the person is considering bringing, or is a party to, related proceedings in relation to matters arising under this Part; and

(b) if the Commissioner of Taxation discloses that superannuation information to the Principal Registrar for the purpose of the relevant proceedings—disclose the superannuation information to the following:

(i) that person and each lawyer of that person;

(ii) the other party and each lawyer of that other party;

for that person, other party or lawyer to make a record of, or disclose, for the purpose of the relevant proceedings.

Note 1: Making a record of, or on‑disclosing, that superannuation information may be an offence unless it is for the purpose of the relevant proceedings, see sections 355‑155 and 355‑175 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: Disclosing superannuation information for the purpose of proceedings relating to matters arising under this Part extends to disclosing the superannuation information to the trustee of an eligible superannuation plan as part of an application under section 90YZR for the purpose of those proceedings.

Approved form

(3) An application made by a person under subsection (1) is in the approved form if and only if:

(a) it is in the form approved for the purposes of paragraph 90XZJ(3)(a); and

(b) it contains the information (including any declaration) that the form requires; and

(c) it is given in the manner required by the person prescribed for the purposes of paragraph 90XZJ(3)(a) (which may include electronically).

Delegation

(4) The Principal Registrar of the Family Court of Western Australia may, in writing, delegate any of the Principal Registrar’s functions or powers under this section to any other appropriate officer or staff member of that Court.

(5) In this section:

***relevant proceedings*** has the meaning given by paragraph (2)(a).

***superannuation information*** has the same meaning as in subsection 90XZJ(4).

Taxation Administration Act 1953

5 Subsection 355‑65(3) in Schedule 1 (after table item 8A)

Insert:

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| 8B | the Principal Registrar of the Family Court of Western Australia in response to the Principal Registrar’s request under subsection 90YZY(2) of the *Family Law Act 1975* | (a) is of superannuation information (within the meaning of that section); and  (b) is for the purpose of all of the relevant proceedings (within the meaning of that section). |

6 Application of amendments

(1) The amendments of the *Family Law Act 1975* made by this Part apply in relation to proceedings referred to in this Part that are in the Family Court of Western Australia at or after the commencement of this Part, whether the proceedings commenced before or after that commencement.

(2) The amendments of the *Taxation Administration Act 1953* made by this Part apply in relation to records or disclosures of information made at or after the commencement of this Part, whether the information was obtained before, at or after the commencement of this Part.