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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2023: MINOR AND TECHNICAL AMENDMENTS

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
APRA Act	<i>Australian Prudential Regulation Authority Act 1998</i>
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Bill	<i>Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Minor and Technical Amendments</i>
CADB	Companies Auditors Disciplinary Board
Competition and Consumer Act	<i>Competition and Consumer Act 2010</i>
Corporations Act	<i>Corporations Act 2001</i>
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
Insurance Act	<i>Insurance Act 1973</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
Life Insurance Act	<i>Life Insurance Act 1995</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
TAA	<i>Taxation Administration Act 1953</i>
TLAA No. 5 2021	<i>Treasury Laws Amendment (2021 Measures No. 5) Act 2021</i>

Chapter 1 – Minor and technical amendments

Outline of chapter

- 1.1 Schedule 1 makes a number of minor and technical amendments to Treasury portfolio legislation. The amendments demonstrate the Government’s ongoing commitment to the care and maintenance of Treasury portfolio legislation.
- 1.2 The amendments correct drafting errors, repeal inoperative provisions, address unintended outcomes, and make other technical changes.

Context of amendments

- 1.3 Minor and technical amendments are periodically made to Treasury portfolio legislation to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes. The amendments are part of the Government’s ongoing commitment to the care and maintenance of Treasury portfolio legislation.
- 1.4 The minor and technical amendments 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 legislation. The minor and technical amendments process has since been expanded to all Treasury portfolio legislation.

Summary of new law

- 1.5 The minor and technical amendments maintain and improve the quality of Treasury legislation by:
 - correcting typographical and numbering errors;
 - fixing incorrect legislative references;
 - reducing unnecessary red tape;
 - addressing unintended outcomes;
 - adopting modern drafting practices;

- enhancing readability and administrative efficiency;
- repealing redundant and inoperative provisions; and
- making other technical changes.

Detailed explanation of new law

Part 1 – Amendments commencing the day after Royal Assent

Division 1 – Definition of year of income in the SIS Act

- 1.6 The definition of ‘year of income’ in subsection 10(1) of the SIS Act is amended to provide that it has the same meaning as it does in the ITAA 1936.
- 1.7 Without the amendment, the definition of ‘year of income’ in subsection 10(1) of the SIS Act provides that ‘year of income’ in relation to a fund, scheme, or trust means a period that is, for the purposes of the ITAA 1936, a year of income of the fund, scheme, or trust (noting that subsection 6(2A) of the same Act applies accordingly).
- 1.8 The *Tax Laws Amendment (2008 Measures No.4) Act 2008* repealed subsection 6(2A) of the ITAA 1936. However, the definition in the SIS Act was not updated alongside the ITAA 1936 definition. This means that the reference to subsection 6(2A) in subsection 10(1) of the SIS Act is outdated.
- 1.9 This amendment updates the outdated definition so that it is consistent with the ITAA 1936. The new definition of ‘year of income’ will still encompass ‘fund, scheme or trust’. It is technical in nature and does not change the operation of the SIS Act.

[Schedule 1, item 1, section 10 of the SIS Act]

Division 2 – Measures relating to the CADB

- 1.10 Part 11 of the ASIC Act establishes the CADB, which consists of a Chairperson, Deputy Chairperson, six accounting members, and six business members. The powers of the CADB are performed and exercised by a Panel of the CADB, constituted by either three or five members of the CADB. The members of a Panel are determined by the Chairperson. The ASIC Act requires that the Chairperson or Deputy Chairperson be on a Panel and be the Panel Chairperson. A Panel can hold a hearing in relation to a matter.

- 1.11 The definition of ‘Deputy Chairperson’ has been repealed and replaced with the following:
- the Deputy Chairperson of the Disciplinary Board; and
 - in any other case – a Deputy Chairperson of ASIC.
- [Schedule 1, item 2, subsection 5(1) of the ASIC Act]***
- 1.12 The amendments also insert a definition for ‘Panel Chairperson’, which is defined as having the meaning given by subsection 210A(3A).
- [Schedule 1, item 3, subsection 5(1) of the ASIC Act]***
- 1.13 Section 210A of the ASIC Act is amended to allow the Chairperson to constitute a Panel so that either the Chairperson, Deputy Chairperson, or another CADB member who meets certain legal qualification requirements is made the Panel Chairperson.
- 1.14 This amendment ensures that a Panel can be formed to deal with matters in which neither the Chairperson nor the Deputy Chairperson are able to be on a Panel. Importantly, a CADB member must meet certain legal qualification requirements to be a Panel Chairperson to ensure that the member has sufficient knowledge and experience to conduct a hearing.
- [Schedule 1, item 4, subsections 210A(3) to (5) of the ASIC Act]***
- 1.15 Subsection 216(7) of the ASIC Act is also amended to reflect updated drafting practices and to provide that a CADB member who is not on a Panel may be present at a private hearing if approved by the Panel to be present. This amendment applies to a hearing of a Panel that is constituted on or after the commencement of the amendments.
- [Schedule 1, items 5 and 6, subsection 216(7) and section 340 of the ASIC Act]***

Division 3 – Claims handling and settling services

- 1.16 The ASIC Act is amended to align the meaning of financial service with the corresponding definition in the Corporations Act. Recommendation 4.8 of the report by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry suggested that handling and settlement of insurance claims, or potential insurance claims should no longer be excluded from the definition of financial service. Accordingly, the amendments confirm that claims handling or settling services are covered by the ASIC Act’s consumer protections.
- 1.17 These amendments provide certainty and consistency in the law for providers and consumers of claims handling and settling services and reduces the ambiguity in relation to ASIC enforcement action. They also reflect pre-existing provisions concerning misrepresentations in the Corporations Act and

- the Competition and Consumer Act. The amendments do not intend to expand or alter the application of the pre-existing provisions, other than extending their application to claims handling and settling services.
- 1.18 A new heading is inserted alongside a new section 342, which describes the application of the amendment to claims handling and settling services. This amendment applies to representations made on or after the commencement of this amendment.
[Schedule 1, items 7 and 12, paragraph 12BAB(1)(eb) and section 342 of the ASIC Act]
- 1.19 The amendment to section 12DB(1C) of the ASIC Act provides that a person must not make false or misleading representations by any means in connection with the promotion, supply, or use of financial services. Item 8 of Division 3 inserts the new subsection to ensure that a person must not make a false or misleading representation made in connection with the supply or promotion of a claims handling and settling service. This aligns the ASIC Act with the corresponding provisions in the Corporations Act.
[Schedule 1, item 8, subsection 12DB(1C) of the ASIC Act]
- 1.20 The insertion of subsection 12BD(1D) provides that a false or misleading representation concerning testimonials relating to financial services will be taken to be misleading unless evidence is adduced to the contrary. The same evidentiary burden applies to testimonials concerning a claim handling and settling service. This means that the failure to adduce evidence to the contrary where it is alleged that a person has made a false or misleading representation concerning a testimonial will result in the representation being found to be misleading. This provides consistency in the way allegations of false or misleading representations about testimonials are treated and highlights the seriousness of offences of this nature.
[Schedule 1, item 8, subsection 12DB(1D) of the ASIC Act]
- 1.21 New subsection 12DB(1E) highlights that the accused person does not have to disprove the alleged breach. They are only obliged to adduce evidence to the contrary of the allegation before the court. This is because the onus of proof for these offences is evidentiary. Nonetheless, adducing evidence does not provide the accused with a defence to any allegation that the representation is false or misleading by itself. It merely discharges the onus. This means that a person can discharge the evidentiary onus and still be found to have a misleading representation.
[Schedule 1, item 8, section 12DB(1E) of the ASIC Act]
- 1.22 Subsections 12DB(2) and (3) are amended to reflect the introduction of the new subsection (1C). A chapeau has been introduced to clarify the subsection concerning offences.

[Schedule 1, items 9 to 11, subsections 12DB(2) and 12DB(3) of the ASIC Act]

Division 4 – GST free cars

- 1.23 Section 38-510 of the GST Act provides for the supply of a GST free car and car parts to an eligible individual who has a current disability certificate, issued by the nominated company, certifying the individual has lost the use of their limb(s) to such an extent that they are unable to use public transport.
- 1.24 Section 38-510 was modified by the TLAA No. 5 2021 to allow a registered medical practitioner to issue a certificate of medical eligibility in the approved form, certifying an individual has lost the use of their limb(s) to such an extent that they are unable to use public transport.
- 1.25 The amendment of item 13 of Division 3 clarifies that the TLAA No. 5 2021 amendments do not apply to disability certificates or certificates of medical eligibility that were issued prior to the commencement of the TLAA No. 5 2021 and met the requirements of paragraph 38-510(1)(a) of the GST Act.
- 1.26 The amendment confirms that certificates issued by the nominated company prior to the amendment are still valid and have effect as if the certificate was issued by a medical practitioner.

[Schedule 1, item 13, paragraph 38-510(1)(b) of the GST Act]

Division 5 – Regulation of financial benchmarks

- 1.27 The amendments update section 760B of the Corporations Act to include a reference to ‘Part 7.5B regulation of financial benchmarks’ in table item 5B of the summary table. The summary table in section 760B lists each Part in Chapter 7 and their headings. Part 7.5B was passed into law in 2018 following the commencement of the *Treasury Laws Amendment (2017 Measures No.5) Act 2018*. However, the summary table in section 760B was not updated. This amendment ensures the table is up to date.

[Schedule 1, item 14, table item 5B of section 760B of the Corporations Act]

Division 6 – Authorisations

- 1.28 The Competition and Consumer Act contains many instances of inconsistent spelling of ‘authorisation’ (and variants thereon) with a ‘z’ rather than with an ‘s’.
- 1.29 This amendment corrects these typographical errors so all references to ‘authorisation’ (and its variants) are spelt with an ‘s’.

[Schedule 1, items 15 to 18, of the Competition and Consumer Act]

Division 7 – Other amendments

- 1.30 Paragraph 58(4)(a) of the APRA Act contains references to repealed sections 52A and 52B of the *Banking Act 1959*. The amendment removes the references to these repealed sections in paragraph 58(4)(a).
[Schedule 1, item 19, paragraph 58(4)(a) of the APRA Act]
- 1.31 Paragraphs 58(4)(b) and (c) of the APRA Act contains lists of references to sections of the Insurance Act and the Life Insurance Act, respectively, in non-sequential order. Items 20 and 21 of Division 7 rearrange the references in both paragraphs in a sequential order.
[Schedule 1, items 20 and 21, paragraphs 58(4)(b) and (c) of the APRA Act]
- 1.32 Subsection 244(2) of the ASIC Act contains two paragraphs numbered (d). Item 22 of Division 7 renames the last paragraph as paragraph (g).
[Schedule 1, item 22, paragraph 244(2)(d) of the ASIC Act]
- 1.33 Subsection 285(4) of the ASIC Act contains a reference to the *Legislative Instruments Act 2003*. The *Legislative Instruments Act 2003* has been renamed as the *Legislation Act 2003*. Item 23 of Division 7 updates the name of the Act to the *Legislation Act 2003*.
[Schedule 1, item 23, subsection 285(4) of the ASIC Act]
- 1.34 The definition of ‘electricity retailer’ in section 60A of the Competition and Consumer Act refers to the *Electricity Reform Act 2000* of the Northern Territory. The *Electricity Reform Act 2000* has been renamed as the *Electricity Reform Act 2000*. Item 24 of Division 7 updates the name of the Act to the *Electricity Reform Act 2000*.
[Schedule 1, item 24, section 60A of the Competition and Consumer Act]
- 1.35 Paragraph 151BU(4B)(a) of the Competition and Consumer Act incorrectly refers to ‘publically’ instead of ‘publicly’. Item 25 of Division 7 corrects this typographical error.
[Schedule 1, item 25, paragraph 151BU(4B)(a) of the Competition and Consumer Act]
- 1.36 Subsections 151DB(2A), (2B) and (2C) of the Competition and Consumer Act are no longer required in the law, as the purpose for which they were enacted has been achieved. Item 26 of Division 7 removes these provisions and assists in ensuring the legislation is up-to-date and easy to follow.
[Schedule 1, item 26, subsections 151DB(2A), (2B) and (2C) of the Competition and Consumer Act]
- 1.37 Part 5.4A of the Corporations Act contained 2 Divisions numbered 1A. Item 27 of Division 7 renumbers the Divisions sequentially.
[Schedule 1, item 27, Part 5.4A of the Corporations Act]
- 1.38 Subparagraph 911A(2)(en)(v) of the Corporations Act contains a typographical error, with the word ‘be’ missing before ‘regarded’. Item 28 of Division 7

- inserts the word ‘be’ to subparagraph 911A(2)(en)(v) to fix this typographical error.
[Schedule 1, item 28, sub-subparagraph 911A(2)(en)(v) of the Corporations Act]
- 1.39 Paragraph 985D(1)(b) and subsection 985D(3) of the Corporations Act are no longer required in the law, as the purpose for which these provisions were enacted has been achieved. Items 29 and 30 of Division 7 remove these provisions to ensure the legislation is up to date and easy to follow.
[Schedule 1, items 29 and 30, paragraph 985D(1)(b) and subsection 985D(3) of the Corporations Act]
- 1.40 Paragraph 1292(1)(a) of the Corporations Act contains two subparagraphs numbered (ia). Item 31 of Division 7 renumbers the second occurring of (ia) to (iaa).
[Schedule 1, item 31, paragraph 1292(1)(a) of the Corporations Act]
- 1.41 In paragraphs 1301(1)(a) and (b) of the Corporations Act, the word ‘the’ was erroneously in bold and italics. Item 32 of Division 7 removes the bold and italics formatting from the three instances of ‘the’.
[Schedule 1, item 32, paragraphs 1301(1)(a) and (b) of the Corporations Act]
- 1.42 Subsection 1409(4) of the Corporations Act contains a reference to the *Legislative Instruments Act 2003*. The *Legislative Instruments Act 2003* has been renamed as the *Legislation Act 2003*. Item 33 of Division 7 updates the reference to the *Legislation Act 2003*.
[Schedule 1, item 33, subsection 1409(4) of the Corporations Act]
- 1.43 Part 10.33 of the Corporations Act erroneously contains sections numbered 1 and 2 in between sections 1644A and 1647. Items 34 and 35 of Division 7 renumber the sections to 1645 and 1646.
[Schedule 1, items 34 and 35, Part 10.33 of the Corporations Act]
- 1.44 Paragraphs 1678B(6)(a) and (b) of the Corporations Act have no conjunctions at their conclusion. Item 36 of Division 7 fixes this typographical error by inserting ‘and’ at the end of each paragraph.
[Schedule 1, item 36, paragraphs 1678(6)(a) and (b) of the Corporations Act]
- 1.45 The definition of unclaimed money law in subsection 37(4) of Schedule 4 to the Corporations Act referred to the *Companies (Unclaimed Assets and Moneys) Act* of the Northern Territory. This Act has been renamed as the *Companies (Unclaimed Assets and Moneys) Act 1963*. Item 37 of Division 7 updates the reference to this Act.
[Schedule 1, item 37, subsection 37(4) of Schedule 4 to the Corporations Act]
- 1.46 The formula in section 976-1 of the ITAA 1997 contains an incorrect reference to the ‘franking credit on the dividend’. Item 38 of Division 7 corrects this

- reference to the ‘franking credit on the distribution’.
[Schedule 1, item 38, section 976-1 of the ITAA]
- 1.47 Section 127D of the Insurance Act contains paragraphs referring to other sections of that Act in a non-sequential order. Item 39 of Division 7 renumbers the paragraphs, so that they are ordered sequentially.
[Schedule 1, item 39, section 127D of the Insurance Act]
- 1.48 Paragraphs 127D(b), (c) and (f) of the Insurance Act refer to sections 38A and 38B of that Act, which have been repealed. Item 40 of Division 7 repeals these paragraphs as they are redundant following the repeal of sections 38A and 38B.
[Schedule 1, item 40, paragraphs 127D(b), (c) and (f) of the Insurance Act]
- 1.49 Paragraphs 246C(a), (e) and (f) of the Life Insurance Act refer to sections 156A and 156B of that Act, which have been repealed. Item 41 of Division 7 repeal these paragraphs as they are redundant following the repeal of sections 156A and 156B.
[Schedule 1, item 41, paragraphs 246C(a), (e) and (f) of the Life Insurance Act]
- 1.50 Section 246C of the Life Insurance Act contains paragraphs referencing other sections of that Act in a non-sequential order. Item 42 of Division 7 rearranges the paragraphs in a sequential order.
[Schedule 1, item 42, section 246C of the Life Insurance Act]
- 1.51 Paragraph 131FD(a) of the SIS Act refers to section 336B of that Act, which has been repealed. Item 43 of Division 7 repeals paragraph 131FD(a) of the SIS Act as it is now redundant. Item 44 of Division 7 provides that, despite the repeal of paragraph 131FD(a), the paragraph continues to apply, at and after the commencement of item 43, in relation to disclosures of information made before the commencement of item 32 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.
[Schedule 1, items 43 and 44, paragraph 131FD(a) of the SIS Act]
- 1.52 Note 1 in subsection 12-390(4) in Schedule 1 to the TAA contains an incorrect reference to ‘managed investment trust’. Items 45 and 46 of Division 7 correct the reference to ‘withholding MIT’.
[Schedule 1, items 45 and 46, Note 1 of subsection 12-390(4) of Schedule 1 to the TAA]

Part 2 – Amendments commencing first day of next quarter

Division 8 – GST at Settlement Credit Entitlement Update

- 1.53 Under Schedule 1 to the TAA, purchasers of new residential premises and potential residential land are required to withhold a portion of the purchase

- price and remit that amount to the ATO as part of the settlement process.
This amount is in respect of the GST payable on the taxable supply of land.
- 1.54 The policy intention is that the entity that is liable to pay GST on the taxable supply should be entitled to the credit for the GST paid by the purchaser. This is in line with how the GST system operates more broadly. However, under the current operation of paragraph 18-60(1)(a) in Schedule 1 to the TAA, the credit entitlement will arise for the entity that makes the taxable supply instead of the entity that has the GST liability in such cases. These entities are often the same, but this is not always the case.
- 1.55 Minor amendments are made to provisions in the GST Act and Schedule 1 to the TAA to make it clear that the entity that is liable to pay GST on the taxable supply is entitled to the credit for the GST paid by the purchaser.
[Schedule 1, items 47, 48 and 49, section 33-1 (note 4) and subsection 40-65(2) (note) of the GST Act, and paragraph 18-60(1)(a) of Schedule 1 to the TAA]
- 1.56 Item 50 of Division 8 provides that the amendments apply to supplies to which subsection 14-250(2) in Schedule 1 to the TAA applies, whether those supplies were made before, on or after the commencement of the item. This means the amendments effectively apply retrospectively in relation to supplies of land for which any of the consideration (other than consideration provided as a deposit) was first provided on or after 1 July 2018. The retrospective application is entirely neutral to taxpayers and ensures the law operates as intended.
[Schedule 1, item 50, section 33-1 (note 4) and subsection 40-65(2) (note) of the GST Act, and paragraph 18-60(1)(a) of Schedule 1 to the TAA]