

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

A New Tax System (Australian Business Number) Act 1999

Competition and Consumer Act 2010

Corporations Act 2001

Income Tax Assessment Act 1997

Superannuation Industry (Supervision) Act 1993

Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018

Section 31 of the *A New Tax System (Australian Business Number) Act 1999* (the ABN Act), section 172 of the *Competition and Consumer Act 2010* (the CC Act), section 909-1 of the *Income Tax Assessment Act 1997* (ITA Act), and section 353 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to those Acts.

Section 926B of the *Corporations Act 2001* (the Corporations Act) provides that regulations may be made to omit, modify or vary specified provisions in Part 7.6 of the Corporations Act.

The purpose of the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018* (the Regulations) is to make a number of miscellaneous amendments to the abovementioned competition, corporations, taxation and superannuation laws. These amendments are part of the Government's commitment to the care and maintenance of the statute book.

The amendments in the Regulations correct technical and drafting defects, and remove anomalies and inoperative provisions in the *A New Tax System (Australian Business Number) Regulations 1999* (the ABN Regulations), the *Competition and Consumer Regulations 2010* (the Competition Regulations), the *Corporations Regulations 2001* (the Corporations Regulations), *Income Tax Assessment Regulations 1997* (ITAR 1997) and the *Superannuation Industry (Supervision) (Transitional Provisions) Regulations 1993*. They also ensure that the law continues to operate as intended.

The Regulations were released for public consultation from 22 October 2018 to 2 November 2018. One submission was received and it largely sought unrelated policy changes which were outside of the scope of this miscellaneous amendments process.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence as follows:

- Sections 1 to 4 and Part 3 of Schedule 1 to the Regulations commence on the day after the instrument is registered.

- Parts 1 and 2 of Schedule 1 to the Regulations commence on 1 July 2017 and 1 November 2018 respectively. The retrospective commencement does not affect a person's rights so as to disadvantage the person, or impose a relevant liability on that person.
- Part 4 of Schedule 1 to the Regulations commence on the first day of the first quarter to occur after the day that the instrument is registered.
- Part 5 of Schedule 1 to the Regulations commence on the later of the day after the instrument is registered and the day on which item 100 of Schedule 5 to the *Treasury Laws Amendment (2018 Measures No. 6) Bill 2018* (the Bill) commences.

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The amendments in the Regulations correct technical and drafting defects, and remove anomalies and inoperative provisions in the *A New Tax System (Australian Business Number) Regulations 1999*, the *Competition and Consumer Regulations 2010*, the *Corporations Regulations 2001*, *Income Tax Assessment Regulations 1997* and the *Superannuation Industry (Supervision) (Transitional Provisions) Regulations 1993*. They also ensure that the law operates as intended.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*

Section 1—Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*.

Section 2—Commencement

Sections 1 to 4 and Part 3 of Schedule 1 to the Regulations commence on the day after the instrument is registered. Parts 1 and 2 of Schedule 1 to the Regulations commence on 1 July 2017 and 1 November 2018 respectively. The retrospective commencement does not affect a person's rights so as to disadvantage the person, or impose a relevant liability on that person.

Part 4 of Schedule 1 to the Regulations commence on the first day of the first quarter to occur after the day that the instrument is registered. Part 5 of Schedule 1 to the Regulations commence on the later of the day after the instrument is registered and the day on which item 100 of Schedule 5 to the Bill commences.

Section 3—Authority

The Regulations are made under the ABN Act, the CC Act, the Corporations Act, the ITA Act and the SIS Act.

Section 4—Schedules

Section 4 provides that each instrument in a Schedule is amended or repealed as set out in the Schedule.

Schedule 1—Parts 1, 2 and 4: Natural Disaster Relief and Recovery Determinations

Farm management deposits (FMD) owners affected by applicable natural disasters may access their FMD within 12 months of deposit, without losing their deductions. Subsection 393-40(3A) of the ITA Act sets out the circumstances, including those specified in the regulations, that must be satisfied to retain the deductions.

Items 1 to 4 of Schedule 1 to the Regulations restructure paragraph 393-15(a) of the ITAR 1997 to consolidate the requirements relating to the recovery assistance provided into a single provision. Minor amendments update the name of the determination to refer to the most recent version and also improve readability by listing the names of the current and past determinations in a new provision. Item 4 lists the current determination, the *Disaster Recovery Funding Arrangements 2018* determined by the Minister for Law Enforcement and Cyber Security on 5 June 2018.

Items 1 to 3 commence from 1 July 2017 to align with the date the *Natural Disaster Relief and Recovery Arrangements Determination 2017* took effect.

Item 4 commence from 1 November 2018 to align with the date the *Disaster Recovery Funding Arrangements 2018* took effect.

The retrospective commencement of items 1 to 4 does not affect a relevant person's rights so as to disadvantage the person, or impose a relevant liability on that person.

Item 17 of Schedule 1 to the Regulations amends regulation 393-15 of the ITAR 1997, which is made for the purposes of subsection 393-40(3A) of the ITA Act, to clarify that the regulation is made for the purposes of the entire subsection. This ensures that the regulation operates as intended.

Schedule 1—Part 3: Amendments commencing the day after Registration

Superannuation income stream benefits

Items 5 to 8 of Schedule 1 to the Regulations amend the ITAR 1997 to confirm the meaning of *superannuation income stream benefit* for the purpose of section 307-70 of the ITA Act.

Item 5 amends the ITAR 1997 so that all superannuation benefits are specified for the purposes of the ITA Act. Certain superannuation benefits paid in the period 1 July 2007 to 30 June 2017 are also specified for the purposes of the ITA Act.

Items 7 and 8 amend the definition of *superannuation income stream* in subregulation 995-1.01 to clarify the meaning of this term for the purposes of subregulation 307-70(2) of the ITAR 1997 which provides that the meaning of the term *superannuation income stream* can be specified in the regulations. These amendments apply in relation to the 2012-13 income year and later income years.

The amendments commence the day after the instrument is registered. However, item 6 provide that item 5 applies from 1 July 2007 and items 7 and 8 apply in relation to the 2012-13 income year and later income years.

The retrospective nature of the application ensures that the meaning of *superannuation income stream benefits* operates as intended from 2007, when significant reforms to simplify the superannuation system commenced. The intention of the existing provisions is clear and taxpayers have been applying the provisions as intended.

Amendment to the Competition Regulations

Item 9 of Schedule 1 to the Regulations inserts a new provision at the end of Part 6 of the Competition Regulations to provide the text that must be displayed on identity cards issued under section 133A of the CC Act (the product safety provision).

Currently the Competition Regulations erroneously only provide the text that must be displayed on identity cards issued under section 154C of the CC Act (the generic search and seizure provisions). The amendment enables greater accuracy and compliance with the legislation.

Amendments to the Corporations Regulations

Item 10 of Schedule 1 to the Regulations modifies section 923C of the Corporations Act. Section 923C prohibits a person from using the terms 'financial adviser', 'financial planner' or a word of like import ('the restricted words') if the person carries on a financial services business or provides a financial service and does not meet the education, training and professional standards in the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*. There are exceptions for persons that use a restricted word in relation to advice provided only to wholesale clients or in-house advice provided to their employer.

Item 10 ensures that this prohibition only applies to individuals. This recognises that the education, training and professional standards apply only to individuals. Corporations cannot satisfy the education, training and professional standards and cannot become relevant providers.

The modified version of section 923C ensures that financial advice firms that employ relevant providers may continue to use restricted terms in their business names or advertisements, notwithstanding that the financial advice firm is not a relevant provider.

Item 10 applies from 1 January 2019 when the modified provision (section 923C) of the Corporations Act starts to apply.

Item 11 of Schedule 1 to the Regulations corrects the grammatical error of using ‘a’ before the words ‘insurance financial services licensee’ in paragraph 7.8.08(17)(a) of the Corporations Regulations.

Schedule 1 – Part 4: Other amendments commencing the first 1 January, 1 April, 1 July or 1 October to occur after registration

Amendments to the ABN Regulations

Item 12 of Schedule 1 to the Regulations corrects the legislative reference to the definition of ‘entity’ in the ABN Act.

Item 13 of Schedule 1 to the Regulations inserts a reference to direct the reader to section 252 of the *Income Tax Assessment Act 1936* for meaning of ‘public officer’ used in regulation 6 of the ABN Regulations. Regulation 6 requires the name of a registered entity’s public officer to be entered on the Australian Business Register. The amendment provides certainty regarding the meaning of the term in regulation 6.

Private health insurance annual statements

Items 14 to 16 of Schedule 1 to the Regulations modifies Regulation 61-220.02 of the ITAR 1997 to ensure that private health insurers must provide an annual statement in for a financial year if requested by the beneficiary in a subsequent financial year. The statement must be in the approved form and provided within 14 days after the day the request is given. Previously, an annual statement was automatically provided rather than only upon request.

These amendments align with the changes recently made in relation to the requirements to provide statements to participants under the *Private Health Insurance (Incentives) Rules 2012 (No.2)*.

Schedule 1 – Part 5: Repeal of the Superannuation Industry (Supervision) (Transitional Provisions) Regulations 1993 (the SIS Transitional Regulations)

Item 18 of Schedule 1 to the Regulations repeal the SIS Transitional Regulations. The SIS Transitional Regulations were made under section 50 of the SIS Act and provided the ‘transitional superannuation fund conditions’ that were relevant to subsections 42(1AC), 42A(4), 50(1) and 50(2) of that Act.

Item 100 of Schedule 5 to the Bill repeals section 50 of the SIS Act on the basis that it is no longer operative. Items 97 and 99 of Schedule 5 to that Bill also amend subsections 42(1AC) and 42A(4) to ensure that they apply to the transitional arrangements made under the former section 50. These changes mean that the SIS Transitional Regulations are no longer required and can be repealed.

The repeal of the SIS Transitional Regulations commences from the later of the day that this instrument is registered and the day on which item 100 of Schedule 5 to the Bill commences. However, the repeal does not commence at all if that Bill never commences. This approach ensures that the SIS Transitional Regulations would not be repealed before the amendments to the SIS Act facilitating the repeal come into effect.