

STATUTE UPDATE (REGULATIONS REFERENCES) REGULATIONS 2020

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Statute Update (Regulations References) Regulations 2020* (the Regulations) are made under the *Airports Act 1996*, the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), the *Australian Citizenship Act 2007* and the *Income Tax Assessment Act 1997*.

The Regulations relate to amendments of those Acts by the *Statute Update (Regulations References) Act 2020*.

The purpose of the Regulations is to prescribe matters that are required to be prescribed in order for amendments made by the Statute Update (Regulation References) Act to the Airports Act, the GST Act, the Australian Citizenship Act and the Income Tax Assessment Act (the Primary Acts) to have their intended effect.

The Regulations make consequential amendments to the *Airports Regulations 1997*, the *A New Tax System (Goods and Services Tax) Regulations 2019*, the *Australian Citizenship Regulation 2016* and the *Income Tax Assessment Regulations 1997*. The amendments would update references to specific regulations with a more general means of identifying provisions.

The Statute Update (Regulation References) Act amends the Primary Acts to update specific references to regulations that had already become out of date due to the remaking or renaming of the regulations or that were at risk of becoming out of date in future due to remaking or renaming.

Rather than referring to regulations by their specific name (for example, the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*) Acts will refer to regulations using more general phrases (such as “prescribed regulations made under the *Family Law Act 1975*”) which are less likely to become out of date due to the remaking or renaming of the regulations. The Regulations prescribe the relevant legislation. The regulations prescribed will be the same as or equivalent to the regulations that were previously specifically named in the Primary Acts.

The Statute Update (Regulation References) Act also replaces references to specific provisions of regulations with more general means of identifying the provisions, so that the correct links between the contents of regulations and Acts will remain even if the regulations are remade, renamed or renumbered. The Regulations prescribe the relevant provisions of regulations. The provisions prescribed will be the same as or equivalent to the provisions that were previously specifically named in the Primary Acts.

The Regulations enhance usability, facilitate interpretation and administration, and promote consistency across the Commonwealth statute book by ensuring that references to other regulations are less likely to become out of date. The amendments are minor and technical in nature. The Regulations alter the text of the law. The amendments either make no change or only minor changes to the substance of the law.

CONSULTATION

Before the Regulations were made, the Ministers responsible for administering regulations made under the Airports Act, the GST Act, the Australian Citizenship Act and the Income Tax Assessment Act considered the general obligation to consult imposed by section 17 of the Legislation Act.

Those ministers are responsible for administering the enabling legislation under which the regulations are made and are therefore the rule-makers for the purposes of section 6 of the Legislation Act.

There was extensive consultation in relation to the Regulations within the Attorney-General's Department, the Department of Infrastructure, Transport, Regional Development and Communications, The Department of the Treasury and the Department of Home Affairs. As the Regulations only make small technical changes to the text of the law and do not affect the interpretation of the law, it was not considered necessary to consult further outside of those Departments.

The Regulations were drafted by the Office of Parliamentary Counsel.

REGULATION IMPACT STATEMENT

Regulations that are made for the purposes of Statute Update Bills are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Best Practice Regulation (OBPR). The OBPR reference for this standing exemption is 25784.

OTHER DETAILS

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence at the same time as the Statute Update (Regulation References) Act commences.

The Regulations, the Airports Act, the GST Act, the Australian Citizenship Act, the Income Tax Assessment Act and the Statute Update (Regulation References) Act are available on the Federal Register of Legislation <https://www.legislation.gov.au/>.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Statute Update (Regulations References) Regulations 2020

The *Statute Update (Regulations References) Regulations 2020* (the Regulations) are 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

The purpose of the Regulations is to prescribe matters that are required to be prescribed in order for amendments made by the *Statute Update (Regulation References) Act 2020* to the *Airports Act 1996*, the *A New Tax System (Goods and Services Tax) Act 1999*, the *Australian Citizenship Act 2007* and the *Income Tax Assessment Act 1997* (the Primary Acts) to have their intended effect.

The Regulations make consequential amendments to the *Airports Regulations 1997*, the *A New Tax System (Goods and Services Tax) Regulations 2019*, the *Australian Citizenship Regulation 2016* and the *Income Tax Assessment Regulations 1997*. The amendments would update references to specific regulations with a more general means of identifying provisions.

The Statute Update (Regulation References) Act amends the Primary Acts to update specific references to regulations that had already become out of date due to the remaking or renaming of the regulations or that were at risk of becoming out of date in future due to remaking or renaming.

Rather than referring to regulations by their specific name (for example, the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*) the Primary Acts will refer to regulations using more general phrases (such as “prescribed regulations made under the *Family Law Act 1975*”) which are less likely to become out of date due to the remaking or renaming of the regulations. The Regulations prescribe the relevant legislation. The regulations prescribed will be the same as or equivalent to the regulations that were previously specifically named in the Primary Acts.

The Statute Update (Regulation References) Act also replaces references to specific provisions of regulations with more general means of identifying the provisions, so that the correct links between the contents of regulations and Acts will remain even if the regulations are remade, renamed or renumbered. The Regulations prescribe the relevant provisions of regulations. The provisions prescribed will be the same as or equivalent to the regulations that were previously specifically named in the Primary Acts.

The Regulations will enhance usability, facilitate interpretation and administration, and promote consistency across the Commonwealth statute book by ensuring that references to other regulations are less likely to become out of date. The amendments are minor and technical in nature. The Regulations alter the text of the law. The amendments either make no change or only minor changes to the substance of the law.

Human rights implications

The Regulations do not engage any human rights issues as they make minor technical improvements to legislation. They make either no change or only minor changes to the substance of the law.

Conclusion

The Regulations are 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, as they do not engage any of the applicable rights or freedoms or alter any human rights safeguards currently in place.

Details of the *Statute Update (Regulations References) Regulations 2020*

Section 1—Name

This section provides for the name of the Regulations to be the *Statute Update (Regulations References) Regulations 2020*.

Section 2—Commencement

This section provides for the whole of the Regulations to commence at the same time as the *Statute Update (Regulations References) Act 2020*.

Section 3—Authority

This section provides that the Regulations are made under the *Airports Act 1996*, the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), the *Australian Citizenship Act 2007* and the *Income Tax Assessment Act 1997*.

Section 4—Schedules

This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable item in the Schedule.

Schedule 1—Amendments

Schedule 1 amends the *Airports Regulations 1997*, the *A New Tax System (Goods and Services Tax) Regulations 2019* (GST Regulations), the *Australian Citizenship Regulation 2016* and the *Income Tax Assessment Regulations 1997*.

Amendment of the Airports Regulations 1997

Item [1] – After Part 12

This item amends the Airports Regulations to add a Part 13 after Part 12. Part 13 contains one regulation, regulation 13.01.

Part 13—Miscellaneous

New Regulation 13.01 Regulations declaring airport site

Section 251B of the Airports Act provides for regulations to declare an airport site and applies if subregulation 1.03(1) of the Airports Regulations declares a Commonwealth place to be an airport site. Subsections 251B(2) and (4) provide that subregulation 1.03(1) may be amended to specify an airport site even if, at the time the amending regulation commences, a part of the place is not a Commonwealth place.

Items 11 to 16 of Schedule 1 to the Statute Update (Regulations References) Act amend section 251B of the Airports Act to replace references to the identified subregulation with

more general references to prescribed provisions (the declaration provision and land description provision) of regulations made under the Airports Act.

New subregulation 13.01(1)

New subregulation 13.01(1) provides that for the purposes of subsection 251B(1) of the Airports Act, subregulation 1.03(1) of the Airports Regulations is prescribed. This is the declaration provision.

New subregulation 13.01(2)

New subregulation 13.01(2) provides that for the purposes of subsection 251B(4) of the Airports Act, each of the Parts of Schedule 1 to the Airports Regulations is prescribed. This is the land description provision.

The declaration provision and the land description provision refer to the same provisions as the current specified subregulation under subsections 251B(1) and (4) of the Airports Act.

Amendment of the A New Tax System (Goods and Services Tax) Regulations 2019

Item [2] – Before section 38-45.01

New section 38-7.01 Medical services

Section 38-7 of the GST Act provides that a supply of a medical service is generally GST-free. Subsection 38-7(2) of the GST Act provides for circumstances in which a supply of a medical service is not GST-free. Paragraph 38-7(2)(a) of the GST Act provides that specified regulations may prescribe circumstances in which a supply of a medical service is not GST-free.

Item 18 of the Statute Update (Regulations References) Act amends paragraph 38-7(2)(a) of the GST Act to replace a reference to “prescribed circumstances within the meaning of regulation 14 of the Health Insurance Regulations made under the *Health Insurance Act 1973* (other than the prescribed circumstances set out in regulations 14(2)(ea), (f) and (g))” with a more general reference to “circumstances covered by a prescribed provision of regulations made under the *Health Insurance Act 1973*”.

The previous reference to the Health Insurance Regulations was to the *Health Insurance Regulations 1975*, which were repealed by the *Health Insurance (Repeal and Consequential Amendments) Regulation 2018*. The equivalent provision is now Clause 1.2.9 (except paragraphs (e), (f) and (g) of that clause) of Schedule 1 to the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020* (General Medical Services Table Regulations).

Item 2 of the Regulations would amend the GST Regulations to insert new section 38 7.01 before section 38 45.01. New section 38 7.01 would prescribe clause 1.2.9 (except paragraphs (e), (f) and (g) of that clause) of Schedule 1 to the General Medical Services Table Regulations Health Insurance (General Medical Services Table) Regulations (No. 2) 2020 (General Medical Services Table Regulations for the purposes of paragraph 38-79(2)(a) of the GST Act). These are the prescribed circumstances, for the purposes of

paragraph 38-79(2)(a) of the GST Act, where the supply of a medical services is not GST-free.

These prescribed circumstances cover the same circumstances as prescribed under the current specified regulations in paragraph 38-7(2)(a) of the GST Act.

Amendment of the Australian Citizenship Regulation 2016

Item [3] – After section 6

Section 19C of the Australian Citizenship Act sets out how a person applies for citizenship by intercountry adoption and provides the eligibility criteria for such an applicant. Subsection 19C(4) contains definitions for the purposes of the section, defining “Bilateral Arrangements regulations” and “Intercountry Adoption regulations” by reference to specified regulations, the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998* (Intercountry Adoption Regulations) and the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Hague Convention Regulations).

Items 19 and 20 of Schedule 1 to the Statute Update (Regulations References) Act amend these definitions to replace specific references to regulations with a more general reference to prescribed regulations made under the *Family Law Act 1975*.

Item 3 of the Regulations amends the Australian Citizenship Regulation to insert new section 6A after section 6.

New subsection 6A(1)

New subsection 6A(1) provides that for the purposes of the definition of “Bilateral Arrangements regulations” in subsection 19C(4) of the Australian Citizenship Act, the Intercountry Adoption Regulations are prescribed.

New subsection 6A(2)

New subsection 6A(2) provides that for the purposes of the definition of “Intercountry Adoption regulations” in subsection 19C(4) of the Australian Citizenship Act, the Hague Convention Regulations are prescribed.

The prescribed regulations under the Family Law Act refer to the same regulations as the current specified regulations in subsection 19C(4) of the Australian Citizenship Act.

Amendments of the Income Tax Assessment Regulations 1997

Item [4] – After subregulation 51-5.01 (1)

Section 51-5 of the Income Tax Assessment Act exempts from income tax certain payments received by members and former members of the Defence Force and some other recipients. Item 1.7 of the table in section 51-5 provides that a reparation payment or additional payment, received as a result of recommendations made by the Defence Force Ombudsman performing a function under section 14 or 14B of the *Ombudsman Regulations 2017*, is exempt from income tax.

Item 24 of Schedule 1 to the Statute Update (Regulations References) Act amends table item 1.7 in section 51-5 of the Income Tax Assessment Act to replace a specific reference to section 14 or 14B of the Ombudsman Regulations with a more general reference to a prescribed provision of regulations made under the *Ombudsman Act 1976*.

Item 4 of the Regulations amends the Income Tax Assessment Regulations to insert new subregulation 51-5.01(1A) after subregulation 51-501(1).

New subregulation 51-5.01(1A)

New subregulation 51-5.01(1A) provides that for the purposes of item 1.7 of the table in section 51-5 of the Income Tax Assessment Act, sections 14 and 14B of the Ombudsman Regulations are prescribed.

The prescribed regulations refer to the same regulations as the current specified regulations in Item 1.7 of the table in section 51-5 of the Income Tax Assessment Act.

Item [5] – Before regulation 307-70.01

Section 307-5 of the Income Tax Assessment Act defines a “superannuation benefit” for the purposes of the taxation of superannuation. Subsection 307-5(7) defines a “family law superannuation benefit”. Subparagraph 307-5(a)(ii) provides a family law superannuation payment is a payment in accordance with specified regulations, the *Family Law (Superannuation Regulations) 2001* (Superannuation Regulations).

Item 26 of Schedule 1 to the Statute Update (Regulations References) Act amends subparagraph 307-5(7)(a)(ii) of the Income Tax Assessment Act to replace this specific reference to the Superannuation Regulations with a more general reference to prescribed regulations made under the Family Law Act.

The references to other regulations in subparagraphs 307-5(a)(iii) and (iv) are not being replaced as they are exempt from sunseting and thus are unlikely to become out of date due to the renaming or remaking of the regulations.

Item 5 of the Regulations amends the Income Tax Assessment Regulations to insert new regulation 307-5.01 before regulation 307-70.01.

New regulation 307-5.01

New regulation 307-5.01 provides that for the purposes of subparagraph 307-5(7)(a)(ii) of the Income Tax Assessment Act, the Superannuation Regulations are prescribed.

The prescribed regulations refer to the same regulations as the current specified regulations in subparagraph 307-5(7)(a)(ii) of the Income Tax Assessment Act.