

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister for Competition, Charities and Treasury**

*Corporations Act 2001*

*Superannuation Industry (Supervision) Act 1993*

*Taxation Administration Act 1953*

*Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations  
2024*

The purpose of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments No.2) Regulations 2024* (the Amending Regulations) is to make miscellaneous and technical amendments to regulations in the Treasury portfolio, including to laws with respect to corporations, superannuation and taxation. The amendments demonstrate the Government's commitment to the care and maintenance of Treasury portfolio legislation.

The following provisions provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act (collectively, the Authorising Acts): section 1364 of the *Corporations Act 2001* (Corporations Act), section 353 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and section 18 of the *Taxation Administration Act 1953*.

Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct errors and unintended outcomes, make technical changes and improve the quality of Treasury portfolio legislation. The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax legislation. It has since been expanded to all Treasury legislation.

The Treasury consulted with the public on exposure draft legislation. Most of the amendments were publicly consulted between 27 September 2024 and 11 October 2024. From the consultation, four submissions were received regarding the proposed package of amendments. A number of suggestions included in the submissions were beyond the limited scope of the miscellaneous and technical amendments process. Other submissions received suggested drafting refinements on the exposure draft legislation and the exposure draft explanatory statement. These suggestions have been considered and incorporated where appropriate.

For the remaining amendments (Divisions 5 and 6 of Part 1 of Schedule 1, and Part 3 of Schedule 1), public consultation occurred at the same time as the corresponding primary law miscellaneous and technical amendments in Schedule 5 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*, being 30 January 2024 to 12 February 2024. During that consultation, one submission was received relating to these amendments but it was beyond the limited scope of the miscellaneous and technical amendments process. These amendments to regulations were

not made until the corresponding primary law amendments received Royal Assent, being 9 July 2024.

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

The Authorising Acts do not specify any conditions that need to be satisfied before the power to make the Amending Regulations may be exercised.

A statement of Compatibility with Human Rights is at [Attachment B](#).

The Office of Impact Analysis (OIA) has been consulted (OIA24-08444) and agreed that the proposals are unlikely to have a more than minor impact. As such, an Impact Analysis (IA) is not required.

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

The amendments to the *Taxation Administration Regulations 2017* are not exempt from sunseting. The remaining amendments to the *Corporations Regulations 2001* and *Superannuation Industry (Supervision) Regulations 1994* are exempt from sunseting under table items 18 and 59A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Once the amendments are made, the Amending Regulations will be automatically repealed under section 48A of the *Legislation Act 2003*.

Part 1 of Schedule 1 to the Amending Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Part 2 of Schedule 1 to the Amending Regulations commences on the first day of the next quarter after the instrument is registered on the Federal Register of Legislation.

Part 3 of Schedule 1 to the Amending Regulations commences at the same time as Part 3 of Schedule 5 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*, which, in the absence of a relevant Proclamation, is 9 January 2025.

**Details of the Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2024**

**Section 1 – Name**

This section provides that the name of the regulations is the *Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2024* (the Amending Regulations).

**Section 2 – Commencement**

This section provides the following:

Part 1 of Schedule 1 to the Amending Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Part 2 of Schedule 1 to the Amending Regulations commences on the first day of the next quarter after the instrument is registered on the Federal Register of Legislation.

Part 3 of Schedule 1 to the Amending Regulations commences at the same time as Part 3 of Schedule 5 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*, which, in the absence of a relevant Proclamation, is 9 January 2025.

**Section 3 – Authority**

This section provides that the Amending Regulations are made under the *Corporations Act 2001* (Corporations Act), *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Taxation Administration Act 1953* (TAA 1953) (collectively, the Authorising Acts).

**Section 4 – Schedule**

This section provides that each instrument specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

**Schedule 1**

Legislative references below are made to Schedule 1 to the Amending Regulations, unless otherwise stated.

**Part 1 – Amendments commencing on the day after registration**

**Division 1 – Corporations Regulations 2001**

***Amendments to the Corporations Regulations 2001***

Items 1 to 4 of Schedule 1 amend the *Corporations Regulations 2001* (Corporations Regulations) to update outdated references to Northern Territory legislation.

Schedules 8AB and 8AC of the Corporations Regulations prescribe State and Territory laws and provisions for paragraphs 601RAE(4)(a) and 601RAE(4)(b) of the *Corporations Act 2001* (Corporations Act). This includes Northern Territory legislation, where certain legislative references are out of date.

Since the passage of the *Interpretation Legislation Amendment Act 2018* (NT), several references to Northern Territory legislation in the Corporations Regulations are now outdated. Prior to the passage of the *Interpretation Legislation Amendment Act 2018* (NT), the *Amendments Incorporation Act* (NT) provided that references to the short title of Northern Territory legislation should not include the year of enactment for the legislation. However, this was changed by the *Interpretation Legislation Amendment Act 2018* (NT). These amendments insert the year of enactment for prescribed Northern Territory legislation, make minor editorial amendments and replace outdated references.

#### **Item [1] – Schedule 8AB (table item 5)**

Item 1 inserts the year of enactment for the *Companies (Trustees and Personal Representatives) Act*, being ‘1981’, into table item 5 of Schedule 8AB to the Corporations Regulations.

#### **Item [2] – Schedule 8AC (table item 14)**

Item 2 replaces the outdated reference to the *Adult Guardianship Act* (NT) in table item 14 of Schedule 8AC to the Corporations Regulations, with the *Guardianship of Adults Act 2016* (NT).

#### **Item [3] – Schedule 8AC (table item 15)**

Item 3 inserts the year of enactment for the *Guardianship of Infants Act*, being ‘1972’, into table item 15 of Schedule 8AC of the Corporations Regulations.

#### **Item [4] – Schedule 8AE (table item 8)**

Item 4 replaces the incomplete and unitalicised reference to the ‘Trustee Act (NT)’ in table item 8 of Schedule 8AE of the Corporations Regulations, with *Trustee Act 1893* (NT), Part I.

### **Division 2 – Conditional offer of goods or services**

#### **Amendments to the *Superannuation Industry (Supervision) Regulations 1994***

Items 5 to 8 of Schedule 1 amend the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to remove an exemption from section 68A of the SIS Act.

Former section 68A of the SIS Act contained the general rule which prohibited the trustee or associate of the trustee of a regulated superannuation fund (Fund) from supplying, or offering to supply, a good or service to an employer on the condition that their employees will apply to be members of the Fund.

Regulation 13.18A of the SIS Regulations prescribes exemptions from section 68A of the SIS Act. Relevantly, paragraph 13.18A(1)(a) allows a trustee, or an associate of the trustee of the Fund, to supply a business loan to an employer, on the condition that the employer be a member of the Fund and the business loan is on commercial arm's length basis.

Section 68A of the SIS Act was amended by Schedule 9 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No.1) Act 2019*. Those amendments prohibited trustees of a Fund from providing goods or services to an employer (or 'treating' an employer) where the action may influence the employer to nominate the fund as a default fund or having one or more of their employees apply or agree to become a member of the Fund. Specifically, the amendments replaced the previous prohibition on the supply or offer to supply being 'conditional on' the employee becoming a member of the Fund, with a lower threshold of 'reasonably expected to influence' an employer's decision to nominate the Fund as the default or encourage their employees to nominate the Fund as their fund of choice.

#### **Item [5] – Subregulation 13.18A(1)**

Item 5 omits "(1) For" and substitutes "For the purposes of" in subsection 13.18A(1) of the SIS Regulations, to clarify which provisions the regulations apply to.

#### **Item [6] – Paragraph 13.18A(1)(a)**

Item 6 repeals paragraph 13.18A(1)(a) of the SIS Regulations, which allows the Fund to provide a business loan to an employer on a commercial arm's length basis and on the condition that the employer be a member of the fund. This is because the exemption does not align with the revised threshold of 'reasonably expected to influence' in section 68A of the SIS Act.

#### **Item [7] – Subregulation 13.18A(2)**

Item 7 repeals subregulation 13.18A(2) of the SIS Regulations. This subregulation outlines an exception to the exemption in paragraph 13.18A (1)(a). That is, loans that are supplied on the condition that a person (other than the person receiving the loan), is a member of the Fund are not exempt from section 68A of the SIS Act. This contemplated scenario will be redundant with the repeal of paragraph 13.18A (1)(a) of the SIS Regulations.

#### **Item [8] – Part 14**

Item 8 provides that these amendments apply in relation to the provision of goods or services, or the refusal to provide goods or services, that occur on or after the commencement.

### **Division 3 – Trustee-directed products**

#### **Amendments to the *Superannuation Industry (Supervision) Regulations 1994***

#### **Item [9] – Paragraph 9AB.2(2)(a)**

Item 9 of Schedule 1 amends section 9AB.2 of the SIS Regulations to exclude transition to retirement (TTR) income streams from the meaning of 'trustee-directed product'.

Trustee-directed products, as defined in section 9AB.2 of the SIS Regulations, are subject to the annual superannuation performance test run by the Australian Prudential Regulation Authority (APRA). A superannuation interest that supports a superannuation income stream in the retirement phase is excluded from the trustee directed product definition, and thus, also excluded from the annual superannuation performance test. The amendment ensures the consistent treatment of TTR with other superannuation income streams in the retirement phase.

Item 9 amends the definition of trustee-direction product to exclude TTR products, to align with current practice and policy intent. APRA has not included TTR products when conducting the annual superannuation performance test to date.

#### **Division 4 – Payment splits**

##### ***Amendments to the Superannuation Industry (Supervision) Regulations 1994***

Items 10 to 13 of Schedule 1 repeal a redundant regulation from the SIS Regulations and make consequential amendments.

##### **Item [10] – Regulation 2.36D**

Item 10 repeals regulation 2.36D of the SIS Regulations.

Regulation 2.36D of the SIS Regulations was a transitional regulation that became no longer applicable. The *Superannuation Industry (Supervision) Amendment Regulations 2002 (No. 5)* amended Regulation 2.36D so it does not apply to funds that elected to operate under the Corporations Act. Since then, all funds must operate under the Corporations Act, so the regulation is redundant.

##### **Items [11 to 13] – Paragraphs 7A.11(10)(c), 7A.12(5)(c) and 7A.13(8)(c)**

Items 11 to 13 make consequential repeals to cross-references to the regulation 2.36D in paragraphs 7A.11(10)(c), 7A.12(5)(c) and 7A.13(8)(c) of the SIS Regulations.

#### **Division 5 – Actuaries and auditors of superannuation entities**

Divisions 5 and 6 of Part 1 of Schedule 1, and Part 3 of Schedule 1 form a set of amendments to the SIS Regulations. These amendments are made following the commencement of Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*, and the corresponding primary law miscellaneous and technical amendments in Schedule 5 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

##### ***Amendments to the Superannuation Industry (Supervision) Regulations 1994***

The amendments in Division 5 relate to obligations of actuaries and auditors of superannuation entities.

### **Item [14] – Regulation 9.03 (heading)**

Item 14 repeals the heading to regulation 9.03 of the SIS Regulations to remove references to sections of the SIS Act and substitutes a new heading that describes the law without reference to the section number. This approach reflects the current drafting practice of not including references to enabling legislation in regulation or section headings.

### **Item [15] – Subregulation 9.03(1)**

Item 15 amends subregulation 9.03(1) to omit “In forming an opinion for the purposes of paragraph 130(1)(a) of the Act or subregulation 9.31(3)”, and substitutes “For the purposes of subsection 130(6) or 130AA(11A) of the Act or subregulation 9.31(3) of these Regulations, in forming an opinion”. The amendment updates legislative references in subregulation 9.03(1) following the amendments made to section 130 of the SIS Act by Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*.

### **Item [16] – Paragraph 9.03(2)(b)**

Item 16 amends paragraph 9.03(2)(b) to insert a reference to “lead auditor” to ensure that the provision applies equally to an individual registrable superannuation entity (RSE) auditor and to the lead auditor of an RSE audit firm or RSE audit company.

### **Item [17] – Subregulation 9.03(3)**

Item 17 amends subregulation 9.03(3) to insert references to paragraphs 130AA(1)(a), (2)(a) and (4)(b) of the SIS Act. Paragraphs 130AA(1)(a), (2)(a) and (4)(b) of the SIS Act include requirements equivalent to those in paragraph 130(1)(a) of the SIS Act (but apply to the lead auditor for the audit of an RSE conducted by an audit company or audit firm).

### **Item [18] – Subregulation 9.03(4) and (5)**

Item 18 repeals subregulations 9.03(4) and (5), as these subregulations are no longer required because they have been incorporated into the SIS Act on commencement of the relevant divisions of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*. These provisions related to the actuarial and audit functions of the superannuation actuary and auditor in relation to the entity.

## **Division 6 – Financial reporting for superannuation entities**

### **Amendments to the *Superannuation Industry (Supervision) Regulations 1994***

#### **Items [19, 21, 22, 24, 25, 27 and 28] – Regulations 11.03, 11.04, 11.05, 11.06 and 11.06A**

Items 19, 21, 22, 24, 25, 27 and 28 make consequential amendments to regulations 11.03, 11.04, 11.05, 11.06 and 11.06A of the SIS Regulations, following the amendments to section 254 of the SIS Act made by the corresponding primary law miscellaneous and technical amendments in Schedule 5 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*. These amendments omit redundant references and repeal redundant provisions in regulations 11.03, 11.04, 11.05, 11.06 and 11.06A of the SIS Regulations.

Regulations 11.03 and 11.06A, which relate to setting a time period and the person to whom information is given, are repealed entirely. The regulations are no longer necessary because these provisions have been relocated to corresponding provisions in the primary law (in the inserted section 254 of the SIS Act) following the commencement of the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

### **Items [20, 23 and 26] – Regulations 11.04 (heading), 11.05 (heading) and 11.06 (heading)**

Items 20, 23 and 26 make editorial amendments to the headings to regulations 11.04, 11.05 and 11.06 of the SIS Regulations respectively to remove references to sections of the SIS Act. This approach reflects the current drafting practice of not including references to enabling legislation in regulation or section headings.

## **Part 2 – Amendments commencing on the first day of next quarter: Shadow Economy Taskforce**

### **Amendments to the *Taxation Administration Regulations 2017***

#### **Item [29] – Subsection 67 (table item 8)**

Item 29 of Schedule 1 updates the name of a prescribed taskforce.

Section 67 of the *Taxation Administration Regulations 2017* contains a list of prescribed taskforces to whom the disclosure of protected information by taxation officers is allowed. Currently, table item 8 of the table in section 67 lists the ‘Shadow Economy Standing Taskforce’ as a prescribed taskforce. The correct name for this taskforce is the ‘Shadow Economy Taskforce’.

Item 29 makes an editorial update to the name of the prescribed taskforce at table item 8 of the table in section 67, replacing ‘Shadow Economy Standing Taskforce’ with ‘Shadow Economy Taskforce’. This change ensures the provisions allowing disclosure of protected information to the taskforce are working as intended.

## **Part 3 – Amendments commencing at other times: Duty of superannuation trustees to notify the Regulator of significant adverse events**

### **Amendments to the *Superannuation Industry (Supervision) Regulations 1994***

Items 30 and 31 amend the SIS Regulations following the commencement of Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*, and make consequential amendments corresponding to the primary law miscellaneous and technical amendments in Schedule 5 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

These amendments commence at the same time as Part 3 of Schedule 5 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*, which, in the absence of a relevant Proclamation, is 9 January 2025.



Together with the corresponding primary law amendments, these amendments clarify the operation of the duty of superannuation trustees to notify the Regulator of significant adverse events. A significant adverse event occurs if it occurs before the trustee is required to provide fund information to members.

**Item [30] – After Part 9AB**

Item 30 inserts regulation 9AC.01 into the SIS Regulations. Regulation 9AC.01 provides that “fund information”, for the purposes of subsection 106(1A) of the SIS Act, means fund information required to be provided under regulation 7.9.32 of the Corporations Regulations. Subsection 106(1A) was inserted to the SIS Act by the corresponding primary law amendments.

**Item [31] – Paragraphs 11.04(c) and 11.05(c)**

Item 31 amends paragraphs 11.04(c) and 11.05(c) of the SIS Regulations to omit “fund information” and substitute “information about the fund”. This clarifies that “fund information” (now a defined term) and “information about the fund” are now two distinct concepts in the SIS Regulations. The amendments ensure that the correct terms are used for the relevant obligations.

**Statement of Compatibility with Human Rights**

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

**Treasury Laws Amendment (Miscellaneous and Technical Amendments No.2) Regulations 2024**

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 purpose of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments No.2) Regulations 2024* is to make miscellaneous and technical amendments to regulations in the Treasury portfolio, including to laws with respect to corporations, superannuation and taxation. The amendments demonstrate the Government's commitment to the care and maintenance of Treasury portfolio legislation.

Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct errors and unintended outcomes, make technical changes and improve the quality of Treasury portfolio legislation. The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax legislation. It has since been expanded to all Treasury legislation.

**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.