

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

The purpose of the *Miscellaneous and technical amendments Regulations* (the Amending Regulations) is to make miscellaneous and technical amendments to regulations in the Treasury portfolio. 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.

The Amending Regulations amend various Treasury portfolio regulations to correct drafting errors and unintended outcomes, repeal inoperative provisions, and make other technical changes.

Details of the Amending Regulations are set out in Attachment A.

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids;
and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

EXPOSURE DRAFT

Details of the Amending Regulations

Section 1 – Name

This section provides that the name of the regulations is the *Miscellaneous and technical amendments Regulations* (the Amending Regulations).

Section 2 – Commencement

Schedule 1, Part 1 of the Amending Regulations commence on the day after the Regulations are registered.

Schedule 1, Part 2 of the Amending Regulations commence on the first day of the next quarter after the Regulations are registered.

Schedule 1, Part 3, Division 1 of the Amending Regulations commence as the same time as Division 1 of Part 3 of Schedule 1 to the Primary Miscellaneous and Technical Amendments Act.

Schedule 1, Part 3, Division 2 of the Amending Regulations commence on the later of the start of the day after the Regulations are registered or the commencement of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

Section 3 – Authority

The Regulations are made under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), the *Superannuation Industry (Supervision) Act 1994* (SIS Act), the *Retirement Savings Accounts Act 1997*, and the *Taxation Administration Act 1953*.

Section 4 – Schedule

This section provides that each instrument that is 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 of the Amending Regulations unless otherwise stated.

Part 1 – Amendments commencing on the day after registration

[MTA (Repealing industry body in ASIC Regulations)]

Division 1 – Australian Securities and Investments Commission Regulations 2001

Item 1 repeals Regulation 8B of the ASIC Regulations.

Subsection 203(1B) of the ASIC Act sets out the requirements for appointed members of the Company Auditors Disciplinary Board, which includes the membership of either ‘a

professional accounting body’ or ‘any other body prescribed by the regulations’ (subparagraph 203(1B)(b)(i)-(ii) of the ASIC Act).

Prior to the amendments, regulation 8B of the ASIC Regulations prescribes the ‘Insolvency Practitioners Association of Australia’ for the purpose of subparagraph 203(1B)(b)(ii) of the ASIC Act, which has been renamed to the Australian Restructuring Insolvency and Turnaround Association. This body was prescribed in relation to the appointment of liquidators to the Company Auditors and Liquidators Disciplinary Board. Following the introduction of the *Insolvency Law Reform Act 2016*, the disciplinary functions in relation to liquidators were transferred to ASIC.

Consequently, there is no purpose in prescribing the Australian Restructuring Insolvency and Turnaround Association - a peak body for restructuring, insolvency, and turnaround professionals, and the provision is repealed.

[MTA (Superseded reference in definition of unfunded public sector superannuation scheme)]

Division 2 – Superannuation Industry (Supervision) Regulations 1994

Item 2 updates the legislative reference in the definition of public sector superannuation scheme.

The Superannuation Industry (Supervision) Regulations 1994 defines unfunded public sector superannuation scheme with reference to the Superannuation Contributions Tax (Assessment and Collection) Regulations 1997. The Superannuation Contributions Tax (Assessment and Collection) Regulations 1997 were repealed in 2019 and the corresponding provision has been included in the *Superannuation Contribution Tax (Assessment and Collection) Act 1997*. Therefore, references to provisions in the subordinate legislation are superseded.

[MTA (Financial reporting and auditing requirements for superannuation)]

Division 3 – Actuaries and auditors of superannuation entities

Division 3 of Part 1 amends regulation 9.03 of the SIS Regulations to make consequential amendments following the commencement of Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*. The amendments relate to obligations of actuaries and auditors of superannuation entities.

Item 3 repeals the heading to regulation 9.03 of the SIS Regulations to remove references to regulations and substitutes a new heading that describes the law without reference to the regulation number. This reflects the current drafting practice of not including references to the enabling legislation in regulation or section headings.

Item 4 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 substitute “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 purpose of this amendment is to make referencing updates to subregulation 9.03(1) following the amendments made to subsection 130 of the SIS Act by Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*.

Item 5 amends paragraph 9.03(2)(b) to insert a reference to “lead auditor” to ensure that the requirements apply equally to an individual RSE auditor and to the lead auditor of an RSE audit firm or RSE audit company.

Item 6 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 7 repeals subregulations 9.03(4) and (5) as these subregulations are no longer required as they will be incorporated into the SIS Act on commencement of the relevant divisions of the [Primary miscellaneous and Technical Amendments Act].

[MTA (Financial reporting and auditing requirements for superannuation)]

Division 4 – Actuaries and auditors of superannuation entities

Division 4 of Part 1 amends the SIS Regulations to make consequential amendments following the commencement of the [Primary Miscellaneous and Technical Amendments Act].

Items 8, 10, 11, 13, 14, 16 and 17 make consequential amendments to regulations 11.03, 11.04, 11.05, 11.06 and 11.06A of the SIS Regulations as a consequence to the amendments to section 254 of the SIS Act made by the [Primary Miscellaneous and Technical Amendments Act]. Regulations 11.03 and 11.06A are repealed entirely as the regulations are no longer necessary (setting a time period and the person to whom information is given to) these provisions will be relocated to corresponding provisions in the primary law (in new section 254 of the SIS Act) following the commencement of the [Primary Miscellaneous and Technical Amendments Act].

Items 9, 12 and 15 makes editorial amendments to the headings to regulations 11.04, 11.05 and 11.06 of the SIS Regulations respectively to remove references to regulation. This reflects the current drafting practice of not including references to the enabling legislation in regulation or section headings.

Part 2 – Amendments commencing first day of next quarter

[MTA (Repeal of redundant references to the CEDP Scheme)]

Division 1 – CDEP Scheme

Division 1 of Part 2 removes redundant references to the Community Development Employment Projects (CDEP) Scheme across subordinate legislation within the Treasury

portfolio, including in the *Retirement Savings Account Regulations 1997* and the SIS Regulations.

The provisions that established the CDEP Scheme and payments associated with the Scheme were repealed by the *Social Security Legislation Amendment (Remote Engagement Program) Act 2021*. The CDEP Scheme ceased operations on 1 July 2015. The remaining legislative references across Treasury portfolio legislation are no longer required.

Items 18 and 20 repeal references to the CDEP Scheme in the *Retirement Savings Account Regulations 1997* and the SIS Regulations respectively.

Items 19 and 21 include application provisions in the *Retirement Savings Account Regulations 1997* and the SIS Regulations respectively. The application provisions under the amendments ensure that any relevant CDEP payments that were made before the commencement of the amendments are not impacted by the amendments.

[MTA (Changing the name of a prescribed taskforce)]

Division 2 – Taxation Administration Regulations 2017

Item 22 updates the name of the prescribed taskforce at table item 8 of the table in section 67 of the *Taxation Administration Regulations 2017* from ‘Black Economy Taskforce’ to ‘Shadow Economy Taskforce’. The amendment allows the lead taskforce agency, the ATO, to formally change the name of the taskforce without affecting the disclosure of protected information to the 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 ‘Black Economy Taskforce’ as a prescribed taskforce. The name for this taskforce is currently the ‘Shadow Economy Taskforce’.

Part 3 – Amendments commencing at other times

[MTA (Financial reporting and auditing requirements for superannuation)]

Division 1 – Duty of superannuation trustees to notify the Regulator of significant adverse events

Items 23 and 24 amends the SIS Regulations to make consequential amendments following the commencement of the Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*. These amendments to the SIS Regulations complement the corresponding amendments in the [Primary Miscellaneous and Technical Amendments Act]. Together the 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 23 inserts regulation 9AC.01 to the SIS Regulations to include a definition of “fund information” for the purposes of subsection 106(1A) of the SIS Act. For the purposes of subsection 106(1A) of the SIS Act, fund information means fund information required to be provided under regulation 7.9.32 of the *Corporations Regulations 2001*.

Subsections 106(1A) and 106(2) were inserted to the SIS Act by the [Primary Miscellaneous and Technical Amendments Act].

Item 24 amends regulation 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 different concepts in the SIS Regulations, and ensure the correct terms are used for the relevant obligations.

[MTA (HFSSS SIS Regs consequential amendments)]

Division 2 – First Home Super Saver Scheme

Item 25 makes a consequential amendment to support the operation of subsections 131-80(1) and (3) of Schedule 1 to the TAA 1953, which was inserted by *Treasury Laws Amendment (2023 Measures No. 3) Act 2023* which has not yet commenced.

In relation to subsections 131-80(1) and (3) of Schedule 1 to the TAA 1953, a consequential amendment to the definition of ‘superannuation system’ in regulation 5.01 of the SIS Regulations was missed. A new paragraph is inserted into that definition to refer to the Commissioner of Taxation in their role as the maker of payments to a superannuation provider under the subsections. This consequential amendment ensures that amounts paid under the subsections are afforded the correct status and treatment in the superannuation system.