Treasury Laws Amendment (2018 Measures No. 1) Act 2018

No. 23, 2018

An Act to amend the law relating to superannuation, corporations and taxation and to repeal certain Acts and provisions of Acts, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

Contents

1 Short title 1
2 Commencement 2
3 Schedules 3

Schedule 1—Regulatory reform 4

Part 1—Commonwealth Borrowing Levy 4

Division 1—Repeals of Acts 4

Commonwealth Borrowing Levy Act 1987 4

Commonwealth Borrowing Levy Collection Act 1987 4

Division 2—Other amendments 4

AeroSpace Technologies of Australia Limited Sale Act 1994 4

CSL Sale Act 1993 4

Medibank Private Sale Act 2006 4

Moomba-Sydney Pipeline System Sale Act 1994 5

Qantas Sale Act 1992 5

Snowy Mountains Engineering Corporation Limited Sale Act 1993 5

Division 3—Transitional provision 5

Part 2—Equity investments in small-medium enterprises 6

Income Tax Assessment Act 1936 6

Income Tax Assessment Act 1997 6

Part 3—Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996 8

Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996 8

Part 4—Terminal medical conditions 9

Income Tax Assessment Act 1997 9

Small Superannuation Accounts Act 1995 9

Superannuation Guarantee (Administration) Act 1992 11

Superannuation (Unclaimed Money and Lost Members) Act 1999 11

Part 5—Receivers, and other controllers, of property of corporations 13

Authorised Version C2018A00023

Corporations Act 2001 13

Part 6—Repeals of Acts and related provisions 18

Division 1—Repeals of Acts 18

Papua and New Guinea Loan (International Bank) Act 1970 18

Statistical Bureau (Tasmania) Act 1924 18

Statistics (Arrangements With States) Act 1956 18

Termination Payments Tax (Assessment and Collection) Act 1997 18

Termination Payments Tax Imposition Act 1997 18

Division 2—Amendments consequential on repeal of statistical legislation 19

Long Service Leave (Commonwealth Employees) Act 1976 19

Division 3—Amendments consequential on repeal of Termination Payments Tax legislation 19

Income Tax Assessment Act 1936 19

Income Tax Assessment Act 1997 20

Retirement Savings Accounts Act 1997 20

Superannuation Industry (Supervision) Act 1993 21

Taxation Administration Act 1953 21

Taxation (Interest on Overpayments and Early Payments) Act 1983 21

Part 7—General application and transitional provisions 22

Schedule 2—Merging superannuation funds 24

Income Tax Assessment Act 1997 24

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012 24

Tax Laws Amendment (2009 Measures No. 6) Act 2010 24

Schedule 3—Superstream gateway network governance funding 26

Australian Prudential Regulation Authority Act 1998 26

Schedule 4—Transfer of early release function 27

Part 1—Amendments 27

Retirement Savings Accounts Act 1997 27

Superannuation Industry (Supervision) Act 1993 28

Authorised Version C2018A00023

Part 2—Application of amendments 30

Schedule 5—Payment of GST on taxable supplies of certain real property 31

Part 1—Main amendments 31

Taxation Administration Act 1953 31

Part 2—Other amendments 38

A New Tax System (Goods and Services Tax) Act 1999 38

Income Tax Assessment Act 1997 38

Taxation Administration Act 1953 39

Part 3—Application of amendments 42

Authorised Version C2018A00023

Treasury Laws Amendment (2018 Measures No. 1) Act 2018

No. 23, 2018

An Act to amend the law relating to superannuation, corporations and taxation and to repeal certain Acts and provisions of Acts, and for related purposes

[*Assented to 29 March 2018*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2018 Measures No. 1) Act 2018*.

Authorised Version C2018A00023

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 March 2018
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	30 March 2018
3. Schedule 1, Part 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2018
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	30 March 2018
5. Schedule 1, Part 4	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2018
6. Schedule 1, Part 5	The day after this Act receives the Royal Assent.	30 March 2018
7. Schedule 1, Part 6, Divisions 1 and 2	The day after this Act receives the Royal Assent.	30 March 2018
8. Schedule 1, Part 6, Division 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2018
9. Schedule 1, Part 7	The day after this Act receives the Royal Assent.	30 March 2018
10. Schedules 2 and 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2018
11. Schedule 4	A single day to be fixed by Proclamation.	

Authorised Version C2018A00023

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
	However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
12. Schedule 5	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Authorised Version C2018A00023

Schedule 1—Regulatory reform

Part 1—Commonwealth Borrowing Levy

Division 1—Repeals of Acts

Commonwealth Borrowing Levy Act 1987

1 The whole of the Act

Repeal the Act.

Commonwealth Borrowing Levy Collection Act 1987

2 The whole of the Act

Repeal the Act.

Division 2—Other amendments

AeroSpace Technologies of Australia Limited Sale Act 1994

3 Part 7

Repeal the Part.

CSL Sale Act 1993

4 Section 52

Repeal the section.

Medibank Private Sale Act 2006

5 Schedule 3

Repeal the Schedule.

Authorised Version C2018A00023

Moomba-Sydney Pipeline System Sale Act 1994

6 Section 54

Repeal the section.

Qantas Sale Act 1992

7 Section 28

Repeal the section.

Snowy Mountains Engineering Corporation Limited Sale Act 1993

8 Section 42

Repeal the section.

Division 3—Transitional provision

9 Exemptions from Commonwealth Borrowing Levy

To avoid doubt, the amendments made by this Part do not make an entity liable to pay an amount of levy imposed by the *Commonwealth Borrowing Levy Act 1987*, repealed by this Part, that the entity would not have been liable to pay apart from those amendments.

Authorised Version C2018A00023

Part 2—Equity investments in small-medium enterprises

Income Tax Assessment Act 1936

10 Division 11B of Part III

Repeal the Division.

11 Subsection 272-90(10) in Schedule 2F

Repeal the subsection.

Income Tax Assessment Act 1997

12 Section 10-5 (table item headed "shares")

Omit:

small-medium enterprise, profit on disposal of shares in	**128TG to 128TL**

13 Section 10-5 (table item headed "small-medium enterprises (SMEs)")

Repeal the item.

14 Section 12-5 (table item headed "shares")

Omit:

small-medium enterprise, loss on disposal of shares in ..	**128TG to 128TL**

15 Section 12-5 (table item headed "small-medium enterprises (SMEs)")

Repeal the item.

16 Section 109-60 (table item 7)

Repeal the item.

17 Section 112-97 (table item 9)

Repeal the item.

Authorised Version C2018A00023

18 Subsection 713-140(5) (table items 1 and 2)

Repeal the items.

19 Application of amendments

(1) The amendments made by this Part apply in relation to assessments for:
  (a) the 2017-18 year of income; and
  (b) later years of income.

(2) However, the amendments made by this Part do not apply to a taxpayer in relation to a threshold interest that the taxpayer acquired before the commencement of this item.

Authorised Version C2018A00023

Part 3—Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996

Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996

20 The whole of the Act

Repeal the Act.

Authorised Version C2018A00023

Part 4—Terminal medical conditions

Income Tax Assessment Act 1997

21 Subsection 307-5(1) (table item 4, column 2)

After “65,”, insert “65A,”.

22 Subsection 307-5(1) (table item 7, column 2)

Omit “or 66”, substitute “, 66 or 66A”.

23 Subsection 307-5(1) (table item 7, column 2)

After “or invalidity”, insert “, or who has a terminal medical condition”.

Small Superannuation Accounts Act 1995

24 Section 14

After:

> *Disability*
>
> - Under section 65, the balance of the amount standing to the credit of the account may be debited from the Special Account and paid by the Commonwealth to the individual if the individual has retired because of permanent disability.

insert:

> *Terminal medical condition*
>
> - Under section 65A, the balance of the amount standing to the credit of the account may be debited from the Special Account and paid by the Commonwealth to the individual if a terminal medical condition exists in relation to the individual.

25 Paragraph 16(b)

After “65,”, insert “65A,”.

Authorised Version C2018A00023

26 Section 16 (after note 2)

Insert:

Note 2A: Section 65A deals with individuals in relation to whom terminal medical conditions exist.

27 Section 62

After:

> • The balance of an individual's account may be withdrawn if the individual has retired because of permanent disability.

insert:

> • The balance of an individual's account may be withdrawn if a terminal medical condition exists in relation to the individual.

28 After section 65

Insert:

65A Withdrawal of account balance—terminal medical condition

Withdrawal request

(1) This section applies to an individual's account if:
  (a) the individual gives the Commissioner of Taxation a request (the ***withdrawal request***) for the withdrawal of the account balance; and
  (b) a terminal medical condition (within the meaning of the *Income Tax Assessment Act 1997*) exists in relation to the individual.

Form of withdrawal request

(2) The withdrawal request must be:
  (a) in writing; and
  (b) in a form approved in writing by the Commissioner of Taxation.

Authorised Version C2018A00023

Compliance with withdrawal request

(3) The Commissioner of Taxation must pay to the individual an amount equal to the account balance immediately before the payment is made.

Special Account to be debited

(4) The Special Account is debited for the purposes of making the payment.

Individual's account to be debited

(5) When the payment is made, the individual's account is debited by the amount of the payment.

Superannuation Guarantee (Administration) Act 1992

29 Subsection 65(1)

After "66", insert ", 66A".

30 After section 66

Insert:

66A Payment to employee with terminal medical condition

Except in a case covered by section 65AA, the Commissioner must pay the amount of the shortfall component to the employee (whether or not he or she is still an employee) if:

(a) a terminal medical condition (within the meaning of the *Income Tax Assessment Act 1997*) exists in relation to the employee; and

(b) the employee has requested the Commissioner in the approved form to pay the amount to him or her.

Superannuation (Unclaimed Money and Lost Members) Act 1999

31 Paragraph 24G(2)(d)

Repeal the paragraph, substitute:

Authorised Version C2018A00023

(d) to the person if this paragraph applies (see subsection (2A)).

32 After subsection 24G(2)

Insert:

(2A) Paragraph (2)(d) applies if:

(a) subparagraph (2)(a)(ii) does not apply; and

(b) any of the following subparagraphs apply:

(i) the person has reached the eligibility age;

(ii) the amount is less than $200;

(iii) a terminal medical condition (within the meaning of the *Income Tax Assessment Act 1997*) exists in relation to the person; and

(c) the person has not died.

Authorised Version C2018A00023

Part 5—Receivers, and other controllers, of property of corporations

Corporations Act 2001

33 Section 9

Insert:

custodial or depository service that a person provides has the meaning given by section 766E.

licensed trustee company has the meaning given by Chapter 5D.

34 Paragraph 53(b)

Omit "within the meaning of Chapter 5D".

35 Paragraph 283AC(1)(aa)

Omit "(within the meaning of Chapter 5D)".

36 At the end of paragraph 426(b)

Add "(including as it applies under paragraph 429A(3)(g))".

37 Before subsection 428(1)

Insert:

Property of corporation

38 After subsection 428(2)

Insert:

(2A) However, if the only property of the corporation in respect of which a receiver has been appointed, or in respect of which there is a controller, is:

(a) scheme property of any registered schemes of which the corporation is the responsible entity; or

(b) property the corporation holds on trust, if the corporation:

(i) is a licensed trustee company; or

Authorised Version C2018A00023

(ii) holds an Australian financial services licence that covers the provision of custodial or depository services;

subsections (1) and (2) apply only to documents or instruments that relate to the relevant registered schemes and trusts. The statement may refer to those schemes and trusts.

Scheme property

(2B) A corporation must set out in every public document, and in every negotiable instrument, of the corporation that relates to a registered scheme, after the name of the corporation where it first appears, a statement that a receiver, or a receiver and manager, as the case requires, has been appointed, if:

(a) the corporation is the responsible entity of the registered scheme; and

(b) a receiver of scheme property (whether in or outside this jurisdiction or in or outside Australia) of the registered scheme has been appointed; and

(c) the scheme property is not property of the corporation.

The statement may refer to the registered scheme.

(2C) A corporation must set out in every public document, and in every negotiable instrument, of the corporation that relates to a registered scheme, after the name of the corporation where it first appears, a statement that a controller is acting, if:

(a) the corporation is the responsible entity of the registered scheme; and

(b) there is a controller (other than a receiver) of scheme property (whether in Australia or elsewhere) of the registered scheme; and

(c) the scheme property is not property of the corporation.

The statement may refer to the registered scheme.

Offence

39 Subsection 428(3)

Omit “subsection (1) or (2)”, substitute “this section”.

40 After subsection 429(2)

Insert:

Authorised Version C2018A00023

(2A) However, if:

(a) the corporation:

(i) is a licensed trustee company; or

(ii) holds an Australian financial services licence that covers the provision of custodial or depository services; and

(b) the only property of the corporation in respect of which a person is controller is property the corporation holds on trust;

subsection (2) applies only to affairs of the corporation that relate to the relevant registered schemes and trusts, and the notice under paragraph (2)(a) may refer to those schemes and trusts.

Note: See section 429A if the property is scheme property of a registered scheme.

41 Subsection 429(6)

After "Subsections (2), (3) and (4)", insert "and 429A(3)".

42 Subsection 429(6A)

After "subsection (2)" (wherever occurring), insert "or 429A(3)".

43 Paragraph 429(6A)(a)

After "paragraphs (2)(b) and (c)", insert "and 429A(3)(e), (f), (g) and (h)".

44 Subsection 429(7)

Omit "section 430", substitute "sections 429A and 430".

45 After section 429

Insert:

429A Special rules for scheme property

Report by controller of scheme property

(1) If:

(a) a person becomes a controller of property of a corporation; and

(b) the only property of the corporation in respect of which a person is controller is scheme property of a registered scheme; and

Authorised Version C2018A00023

(c) the corporation is the responsible entity of the registered scheme;

subsection 429(2) applies only to affairs of the corporation that relate to the relevant registered schemes and trusts, and the notice under paragraph 429(2)(a) may refer to those schemes and trusts.

(2) Subsection 429(2) does not apply if:

(a) a person becomes a controller of property of a corporation; and

(b) the only property of the corporation in respect of which a person is controller is scheme property of a registered scheme; and

(c) the corporation is not the responsible entity of the registered scheme; and

(d) the corporation holds an Australian financial services licence that covers the provision of custodial or depository services.

Reporting to and by responsible entity

(3) If:

(a) a person becomes a controller of property of a corporation; and

(b) the property is scheme property of a registered scheme; and

(c) the property is not property of the responsible entity of the scheme; and

(d) the corporation holds an Australian financial services licence that covers the provision of custodial or depository services;

the following paragraphs apply:

(e) the person must serve on the responsible entity as soon as practicable notice that the person is a controller of the scheme property;

(f) within 14 days after the responsible entity receives the notice, the persons who, on the control day, were directors or the secretary of the responsible entity must make out and submit to the person who is a controller a report in the prescribed form about the affairs of the scheme as at the control day;

(g) paragraph 429(2)(c) and subsections 429(3) to (5) apply, in relation to a report submitted under paragraph (f) of this subsection, in the same way as those provisions apply in

Authorised Version C2018A00023

relation to reports submitted under paragraph 429(2)(b), with the following modifications:

(i) if subsection (2) of this section applies—subparagraph 429(2)(c)(ii) (which requires the person to send a copy of the notice to the corporation) does not apply;

(ii) a reference in those provisions to the reporting officers is treated as being a reference to the directors and secretary mentioned in paragraph (f) of this subsection;

(h) if the person receives a report to which paragraph 429(2)(c) applies (including because of paragraph (g) of this subsection)—the person must, within one month after receipt of the report, send a copy of the notice lodged in accordance with subparagraph 429(2)(c)(i) to the responsible entity.

46 Paragraph 601RAC(3)(b)

Omit "(within the meaning of section 766E)".

47 Section 761A

Repeal the following definitions:

(a) definition of ***custodial or depository service***;

(b) definition of ***licensed trustee company***.

48 Subsection 766E(1)

Omit "For the purposes of this Chapter, a", substitute "A".

49 Paragraph 766E(2)(a)

Omit "for the purposes of this Chapter,".

50 Schedule 3 (cell at table item 120, column headed "Penalty")

Repeal the cell, substitute:

15 penalty units.

Authorised Version C2018A00023

Part 6—Repeals of Acts and related provisions

Division 1—Repeals of Acts

Papua and New Guinea Loan (International Bank) Act 1970

51 The whole of the Act

Repeal the Act.

Statistical Bureau (Tasmania) Act 1924

52 The whole of the Act

Repeal the Act.

Statistics (Arrangements With States) Act 1956

53 The whole of the Act

Repeal the Act.

Termination Payments Tax (Assessment and Collection) Act 1997

54 The whole of the Act

Repeal the Act.

Termination Payments Tax Imposition Act 1997

55 The whole of the Act

Repeal the Act.

Authorised Version C2018A00023

Division 2—Amendments consequential on repeal of statistical legislation

Long Service Leave (Commonwealth Employees) Act 1976

56 Paragraph 24(3)(c)

Before "*Statistics (Arrangements with States) Act 1956*", insert "former".

Division 3—Amendments consequential on repeal of Termination Payments Tax legislation

Income Tax Assessment Act 1936

57 Paragraph 202(l)

Omit ", the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*", substitute "and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*".

58 Subsection 202DH(1)

Omit ", the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* or the *Termination Payments Tax (Assessment and Collection) Act 1997*", substitute "or the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*".

59 Subsection 202DJ(1)

Omit ", the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* and the *Termination Payments Tax (Assessment and Collection) Act 1997*", substitute "and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*".

Authorised Version C2018A00023

Income Tax Assessment Act 1997

60 Section 12-5 (table item headed "termination payments surcharge")

Repeal the item.

61 Section 26-65

Repeal the section.

62 Subsection 995-1(1) (table item 30 in the definition of *assessment*)

Repeal the item.

Retirement Savings Accounts Act 1997

63 Section 16 (paragraph (d) of the definition of *Superannuation Acts*)

Omit "*1999*; and", substitute "*1999*.".

64 Section 16 (paragraph (e) of the definition of *Superannuation Acts*)

Repeal the paragraph.

65 Section 16 (definition of *Surcharge Acts*)

Repeal the definition.

66 Subsection 136(1)

Omit "Surcharge Acts", substitute "*Superannuation Contributions Tax (Assessment and Collection) Act 1997*".

67 Subsections 147A(2) and (3)

Omit "Surcharge Acts", substitute "*Superannuation Contributions Tax (Assessment and Collection) Act 1997*".

Authorised Version C2018A00023

Superannuation Industry (Supervision) Act 1993

68 Section 299W (paragraph (d) of the definition of *Superannuation Acts*)

Omit "*1999*;", substitute "*1999*.".

69 Section 299W (paragraph (e) of the definition of *Superannuation Acts*)

Repeal the paragraph.

70 Section 299W (paragraph (b) of the definition of *Surcharge Acts*)

Omit "*1997*; and", substitute "*1997*.".

71 Section 299W (paragraph (c) of the definition of *Surcharge Acts*)

Repeal the paragraph.

Taxation Administration Act 1953

72 Subsection 8AAB(4) (table items 50 and 51)

Repeal the items.

73 Subsection 250-10(2) in Schedule 1 (table item 145)

Repeal the item.

Taxation (Interest on Overpayments and Early Payments) Act 1983

74 Part IID

Repeal the Part.

Authorised Version C2018A00023

Part 7—General application and transitional provisions

75 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Schedule, the full legal and administrative consequences of:

(a) any act done or omitted to be done; or
(b) any state of affairs existing; or
(c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

76 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Schedule, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument:

(a) making or amending an assessment (including under a provision that is itself repealed or amended);
(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

77 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Schedule deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Authorised Version C2018A00023

78 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the ***subject provision***) of any Act or legislative instrument depends to any extent on an Act, or a provision of an Act, that is repealed by this Schedule, the repeal is disregarded so far as it affects the operation of the subject provision.

79 Part does not limit operation of section 7 of the *Acts Interpretation Act 1901*

This Part does not limit the operation of section 7 of the *Acts Interpretation Act 1901*.

Authorised Version C2018A00023

Schedule 2—Merging superannuation funds

Income Tax Assessment Act 1997

1 Section 310-1 (note 1)

Omit “1 July 2017”, substitute “1 July 2020”.

2 Section 310-1 (note 2)

Omit “1 July 2019”, substitute “1 July 2022”.

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012

3 Item 19 of Schedule 1

Omit “1 July 2017”, substitute “1 July 2020”.

Tax Laws Amendment (2009 Measures No. 6) Act 2010

4 Subsection 2(1) (table item 4)

Repeal the item, substitute:

4. Schedule 2, Parts 4 and 5	1 July 2022.	1 July 2022

5 Subitem 11(1) of Schedule 2

Omit “1 July 2017”, substitute “1 July 2020”.

6 Application of amendments

The amendments made by items 1, 3 and 5 of this Schedule apply in relation to a transferring entity and a receiving entity if:

(a) the condition in subsection 310-10(3), 310-15(3) or 310-20(3) of the *Income Tax Assessment Act 1997* for those entities is satisfied; and

(b) all of the transfer events (if any) referred to in subsection 310-45(2) of that Act for those entities happen;

during the period starting on 1 October 2011 and ending at the end of 1 July 2020.

Authorised Version C2018A00023

Note 1: The effect of paragraph (a) is that all of the members of the original fund will need to become members of a continuing fund during this period.

Note 2: The effect of paragraph (b) is that the transferring fund needs to cease to hold all relevant assets during this period.

Authorised Version C2018A00023

Schedule 3—Superstream gateway network governance funding

Australian Prudential Regulation Authority Act 1998

1 Subparagraph 50(1)(a)(iii)

Repeal the subparagraph, substitute:

(iii) governing and maintaining the superannuation transactions network;

2 Subparagraph 50(1)(b)(iii)

Repeal the subparagraph, substitute:

(iii) governing and maintaining the superannuation transactions network.

3 Subsection 50(6)

Insert:

superannuation transactions network means the network used to send and receive:

(a) payments and information of a kind referred to in subsection 34K(6) of the *Superannuation Industry (Supervision) Act 1993* in compliance with the superannuation data and payment regulations and standards (within the meaning of that Act); and

(b) payments and information of a kind referred to in subsection 45B(6) of the *Retirement Savings Accounts Act 1997* in compliance with the data and payment regulations and standards relating to RSAs (within the meaning of that Act).

4 Subsection 50(6) (definition of *SuperStream measures*)

Repeal the definition.

5 Application of amendments

The amendments made by this Schedule apply in relation to financial years starting on and after 1 July 2018.

Authorised Version C2018A00023

Schedule 4—Transfer of early release function

Part 1—Amendments

Retirement Savings Accounts Act 1997

1 Paragraph 3(1)(b)

Repeal the paragraph, substitute:

(b) APRA also has the general administration of sections 37 to 39 and section 49 to the extent that it is not conferred on either of the following:

(i) ASIC by paragraph (d);

(ii) the Commissioner of Taxation by paragraph (g); and

2 Paragraph 3(1)(ba)

Repeal the paragraph.

3 After paragraph 3(1)(f)

Insert:

; and (g) the Commissioner of Taxation has the general administration of regulations made under section 38 to the extent that the regulations relate to the making and notification of determinations that an amount of benefits in an RSA may be released on compassionate grounds.

4 Subsection 3(1) (note)

Omit “paragraph (e)”, substitute “paragraphs (e), (f) and (g)”.

5 Section 16 (definition of *Chief Executive Medicare*)

Repeal the definition.

6 Section 16 (paragraph (c) of the definition of *Regulator*)

Repeal the paragraph.

7 Subsection 168(4)

Repeal the subsection (not including the note).

Authorised Version C2018A00023

8 Subsection 173(1)

Omit "(1)".

9 Subsection 173(2)

Repeal the subsection (not including the note).

10 Section 198

Repeal the section.

Superannuation Industry (Supervision) Act 1993

11 Subparagraph 6(1)(b)(i)

Repeal the subparagraph.

12 Paragraph 6(1)(ba)

Repeal the paragraph.

13 Subparagraph 6(1)(f)(ia)

Repeal the subparagraph.

14 At the end of paragraph 6(1)(g)

Add:

; and (iii) regulations made under Part 3 to the extent that the regulations relate to the making and notification of determinations that an amount of benefits in a superannuation entity may be released on compassionate grounds.

15 Subsection 6(1) (note)

Omit "paragraphs (e), (f) and (g)", substitute "paragraphs (e), (ea), (f), (fa) and (g)".

16 Subsection 10(1) (definition of *Chief Executive Medicare*)

Repeal the definition.

17 Subsection 10(1) (paragraph (c) of the definition of *Regulator*)

Omit "; and", substitute ".".

Authorised Version C2018A00023

18 Subsection 10(1) (paragraph (d) of the definition of *Regulator*)

Repeal the paragraph.

19 Subsection 320(4)

Repeal the subsection (not including the note).

20 Subsection 327(1)

Omit "(1)".

21 Subsection 327(2)

Repeal the subsection (not including the note).

22 Section 351

Repeal the section.

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Part 2—Application of amendments

23 Application of amendments

The amendments made by Part 1 apply in relation to applications for the release of benefits on compassionate grounds made on or after the commencement of this Schedule.

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Schedule 5—Payment of GST on taxable supplies of certain real property

Part 1—Main amendments

Taxation Administration Act 1953

1 At the end of Division 14 in Schedule 1

Add:

Subdivision 14-E—GST payable on taxable supplies of certain real property

Table of sections

14-250 Recipients of certain taxable supplies of real property must pay amounts to Commissioner
14-255 Notification by suppliers of residential premises etc.

14-250 Recipients of certain taxable supplies of real property must pay amounts to Commissioner

Liability to pay an amount

(1) You must pay to the Commissioner an amount if:
  (a) you are the recipient (within the meaning of the *GST Act) of a *taxable supply that is, or includes, a *supply to which subsection (2) applies; and
  (b) in a case where the supply is a supply of *potential residential land—either:
    (i) you are not registered (within the meaning of that Act); or
    (ii) you do not acquire the thing supplied for a *creditable purpose.

(2) This subsection applies to a *supply, by way of sale or long-term lease (within the meaning of the *GST Act), of:
  (a) *new residential premises that:

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(i) have not been created through *substantial renovations of a building; and
(ii) are not *commercial residential premises; or

(b) *potential residential land that:
(i) is included in a *property subdivision plan; and
(ii) does not contain any building that is in use for a commercial purpose;

other than a supply that is of a kind determined by the Commissioner under subsection (3).

(3) The Commissioner may, by legislative instrument, determine that subsection (2) does not apply to a kind of *supply specified in the determination.

When the amount must be paid

(4) You must pay the amount on or before:
(a) the day on which:
(i) any of the *consideration for the *supply (other than consideration provided as a deposit) is first provided; or
(ii) if the supplier is your *associate, and the supply is without consideration—the supply is made; or
(b) if a determination under subsection (5) applies—the day provided under that determination.

(5) The Commissioner may determine, by legislative instrument, circumstances in which amounts under this section are to be paid on or before the day provided under the determination. The determination may provide for amounts to be paid in instalments.

The amount to be paid

(6) The amount to be paid to the Commissioner is an amount equal to:
(a) if the *margin scheme applies to the *supply:
(i) the percentage, of the amount provided under subsection (7), determined by the Minister under subsection (8); or
(ii) if there is no such determination—7% of the amount provided under subsection (7); or
(b) otherwise—$^{1}/_{11}$ of the amount provided under subsection (7).

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(7) For the purposes of paragraphs (6)(a) and (b), the amount is:
  (a) if the contract for the *supply specifies an amount (the ***contract price***) that is the *price for the supply, subject to normal adjustments that apply on completion of transactions of that kind—that contract price; or
  (b) otherwise—the *price for the supply.

(8) The Minister may, by legislative instrument, determine a percentage exceeding 7%, but not exceeding 9%, for the purposes of subparagraph (6)(a)(i).

(9) Despite subsection (6), if:
  (a) the supplier is your *associate; and
  (b) the *supply is without *consideration or is for consideration that is less than the *GST inclusive market value;

  the amount to be paid to the Commissioner is an amount equal to 10% of the *GST exclusive market value (within the meaning of the *GST Act) of the supply.

(10) Despite subsections (6) and (9), if:
  (a) the *supply does not consist solely of one or more supplies to which subsection (2) applies; and
  (b) it is practicable to ascertain, at the time any of the *consideration for the supply (other than consideration provided as a deposit) is first provided, the amount (the ***reduced amount***) of the amount provided under subsection (6) or (9) that relates to supplies to which subsection (2) applies;

  the amount provided under subsection (6) or (9) is taken (other than for the purposes of this subsection) to be the reduced amount.

Multiple recipients

(11) If there is more than one recipient (within the meaning of the *GST Act) of the *supply (the ***original supply***):
  (a) treat each recipient as being the recipient of a separate supply; and
  (b) treat the amount under subsection (6), (9) or (10) (as the case requires) for such a separate supply as being the same proportion of that amount for the original supply, as the

Authorised Version C2018A00023

proportion of the original supply that is constituted by that separate supply.

Treat recipients who are joint tenants as a single recipient for the purposes of this subsection.

14-255 Notification by suppliers of residential premises etc.

(1) You must not make a *supply, by way of sale or long-term lease (within the meaning of the *GST Act), of *residential premises or of *potential residential land to another entity unless, before making the supply, you have given to the other entity a written notice stating:

(a) whether the other entity will be required to make a payment under section 14-250 in relation to the supply; and

(b) if the other entity will be required to make such a payment in relation to the supply:

(i) your name and *ABN; and

(ii) the amount that the other entity will be required to pay to the Commissioner under section 14-250 in relation to the supply; and

(iii) when the other entity will be required to pay that amount; and

(iv) if some or all of the *consideration for the supply will not be expressed as an amount of *money—the *GST inclusive market value of so much of the consideration as will not be expressed as an amount of money; and

(v) such other matters as are specified in the regulations.

(2) However, subsection (1):

(a) does not apply to a supply of *commercial residential premises; and

(b) does not apply to a supply of *potential residential land to another entity if the other entity:

(i) is registered (within the meaning of the *GST Act); and

(ii) acquires the land for a *creditable purpose.

(3) To avoid doubt, a failure to comply with subsection (1) does not affect the other entity's obligation to make a payment under section 14-250.

Authorised Version C2018A00023

Strict liability offence

(4) You must not fail to give a notice required under this section.

Penalty: 100 penalty units.

(5) An offence against subsection (4) is a strict liability offence.

Note: For strict liability, see section 6.1 of the Criminal Code.

Administrative penalty

(6) You are liable to pay the Commissioner a penalty of 100 penalty units if you fail to give a notice required under this section.

Note: Division 298 contains machinery provisions for administrative penalties.

(7) However, you are not liable to a penalty for failing to meet the requirements of paragraph (1)(b) in relation to a supply if, at the time you gave the notice, you reasonably believed that you were not required to meet those requirements in relation to that supply.

2 At the end of section 16-30 in Schedule 1

Add:

(2) Subsection (1) does not apply in relation to a failure to pay an amount to the Commissioner as required by Subdivision 14-E if:

(a) the amount relates to a *taxable supply of *new residential premises (other than *commercial residential premises); and

(b) the entity was given a notice under section 14-255:

(i) stating that the premises are not new residential premises; or

(ii) indicating that the entity will not be required to pay an amount to the Commissioner under section 14-250 in relation to the supply; and

(c) at the time *consideration for the supply (other than consideration provided as a deposit) is first provided, there was nothing in:

(i) the contract for the supply; or

(ii) any other circumstances relating to the supply;

that made it unreasonable for the entity to believe that the statement or indication was correct.

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(3) Subsection (1) does not apply in relation to a failure to pay an amount to the Commissioner in relation to a *taxable supply as required by Subdivision 14-E if:

(a) the entity required to pay the amount in relation to the supply gives the supplier a bank cheque on or before the day *consideration for the supply (other than consideration provided as a deposit) is first provided; and

(b) the bank cheque is for the amount the entity is required to pay to the Commissioner, and is payable to the Commissioner.

3 At the end of Subdivision 18-A in Schedule 1

Add:

Entitlement to credit: taxable supply of real property

18-60 Credit—payment relating to taxable supply of real property

(1) An entity is entitled to a credit if:

(a) the entity made a *taxable supply to which subsection 14-250(2) applies; and

(b) another entity made a payment under section 14-250 in relation to the supply.

(2) The amount of the credit is an amount equal to the amount of the payment.

(3) The credit arises when an assessment has been made of the entity's *net amount for the *tax period of the entity in which the payment was made.

4 At the end of Subdivision 18-B in Schedule 1

Add:

18-85 Refund by Commissioner of amount withheld from payment in respect of taxable supply of real property

(1) An entity (the ***recipient***) may apply, in the *approved form, to the Commissioner for the refund of an amount if:

Authorised Version C2018A00023

(a) another entity (the ***payer***) has made a payment under section 14-250, or purportedly under that section, in relation to a *taxable supply by the recipient; and

(b) the payment, or part of the payment, was made in error.

(2) The application must be made no later than 14 days before the day on which *GST is payable on the supply.

(3) The amount of the refund that the recipient may apply for is an amount equal to the amount of the payment, or the part of the payment that was made in error, as the case requires.

(4) The Commissioner must refund the amount under subsection (3) if the Commissioner is satisfied that paragraphs (1)(a) and (b) apply and that it would be fair and reasonable to refund the amount, having regard to:

(a) the circumstances that gave rise to the obligation (if any) to make the payment under section 14-250; and

(b) the nature of the error; and

(c) any other matter the Commissioner considers relevant.

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Part 2—Other amendments

A New Tax System (Goods and Services Tax) Act 1999

5 At the end of section 33-1

Add:

Note 4: For taxable supplies of new residential premises or potential residential land, section 14-250 in Schedule 1 to the *Taxation Administration Act 1953* may require the recipient to pay to the Commissioner an amount representing the GST on the supply, and the supplier is then entitled to a credit for that payment under section 18-60 in that Schedule.

6 At the end of subsection 40-65(2)

Add:

Note: For sales of residential premises that are new residential premises, the recipient of the supply must pay an amount representing the GST on the supply to the Commissioner under section 14-250 in Schedule 1 to the *Taxation Administration Act 1953*, and the supplier is entitled to a credit for that payment under section 18-60 in that Schedule.

Income Tax Assessment Act 1997

7 Subsection 995-1(1) (paragraph (b) of the definition of *amount required to be withheld*)

Omit "or *capital proceeds", substitute ", *capital proceeds or *taxable supply".

8 Subsection 995-1(1) (paragraph (b) of the definition of *amount withheld*)

Omit "or *capital proceeds", substitute ", *capital proceeds or *taxable supply".

9 Subsection 995-1(1)

Insert:

commercial residential premises has the same meaning as in the *GST Act.

Authorised Version C2018A00023

consideration, for a *taxable supply, has the same meaning as in the *GST Act.

margin scheme has the same meaning as in the *GST Act.

money, in relation to the *consideration for a *taxable supply, has the same meaning as in the *GST Act.

potential residential land has the same meaning as in the *GST Act.

price, for a *taxable supply, has the same meaning as in the *GST Act.

property subdivision plan has the same meaning as in the *GST Act.

substantial renovations has the same meaning as in the *GST Act.

10 Subsection 995-1(1) (paragraph (c) of the definition of *withholding payment*) (first occurring)

Omit "or the *capital proceeds", substitute "the *capital proceeds or a *taxable supply".

11 Subsection 995-1(1) (at the end of the definition of *withholding payment*) (second occurring)

Add:

; or (e) the *taxable supply in respect of which Subdivision 14-E in that Schedule requires an amount to be paid to the Commissioner.

Taxation Administration Act 1953

12 Division 14 in Schedule 1 (heading)

Repeal the heading, substitute:

Division 14—Benefits, gains and taxable supplies for which amounts must be paid to the Commissioner

13 Paragraph 14-215(1)(d) in Schedule 1

After "withheld", insert "(other than under Subdivision 14-E)".

Authorised Version C2018A00023

14 Subsection 16-25(2) in Schedule 1

Omit "Division 12A, 13 or 14", substitute "Division 12A or 13 or Subdivision 14-A, 14-B, 14-C or 14-D".

15 Paragraph 16-25(4)(b) in Schedule 1

Omit "Division 12A, 13 or 14", substitute "Division 12A or 13 or Subdivision 14-A, 14-B, 14-C or 14-D".

16 Section 16-30 in Schedule 1

Before "An entity", insert "(1)".

17 Subsection 16-70(3) in Schedule 1

Omit "or 14-D", substitute ", 14-D or 14-E".

18 Paragraph 16-140(1)(b) in Schedule 1

Omit "Division 14", substitute "Subdivision 14-A, 14-B, 14-C or 14-D".

19 Paragraph 16-140(2)(b) in Schedule 1

Omit "Division 12A, 13 or 14", substitute "Division 12A or 13 or Subdivision 14-A, 14-B, 14-C or 14-D".

20 Section 16-150 in Schedule 1

Before "An entity", insert "(1)".

21 Paragraph 16-150(b) in Schedule 1

Omit "Division 14", substitute "Subdivision 14-A, 14-B, 14-C or 14-D".

22 At the end of section 16-150 in Schedule 1

Add:

(2) An entity that must pay an amount (even if it is a nil amount) to the Commissioner under Subdivision 14-E (about payments in respect of taxable supplies of certain real property) must notify the Commissioner of the amount:

(a) on or before the day provided in a determination under subsection (3); or

Authorised Version C2018A00023

(b) if there is no such determination—on or before the day on which the amount is due to be paid (regardless of whether it is paid).

The notification must be in the *approved form and lodged with the Commissioner.

(3) The Commissioner may, by legislative instrument, determine when the Commissioner must be notified for the purposes of paragraph (2)(a).

23 Subsection 18-10(1) in Schedule 1

Repeal the subsection, substitute:

(1) The rules set out in sections 18-15, 18-20 and 18-25 do not apply to an *amount withheld from a *withholding payment that is covered by:

(a) Subdivision 12-F (Dividend, interest and royalty payments); or

(b) Subdivision 12-FA (Departing Australia superannuation payments); or

(c) Subdivision 12-FC (Seasonal Labour Mobility Program); or

(d) section 12-320 (Mining payments); or

(e) Subdivision 12-H (Distributions of withholding MIT income); or

(f) Division 13 (Alienated personal services payments); or

(g) Subdivision 14-E (GST payable on taxable supplies of certain real property).

24 Subparagraph 18-65(1)(a)(ii) in Schedule 1

Omit “Subdivision 14-D”, substitute “Subdivisions 14-D and 14-E”.

25 Paragraph 389-20(1)(a) in Schedule 1

Omit “section 16-150”, substitute “subsection 16-150(1)”.

Authorised Version C2018A00023

Part 3—Application of amendments

26 General rule

The amendments made by this Schedule apply in relation to supplies for which any of the consideration (other than consideration provided as a deposit) is first provided on or after 1 July 2018, whether a contract for the supply was entered into before, on or after the commencement of this Schedule.

27 Existing contracts

Despite item 26, if a contract for a supply was entered into before 1 July 2018, the amendments made by this Schedule do not apply in relation to the supply if consideration for the supply (other than consideration provided as a deposit) is first provided before 1 July 2020.

28 Existing property development arrangements

If:

(a) an arrangement entered into before 1 July 2018 between:

(i) an entity (the ***supplier***) making a taxable supply that is, or includes, a supply to which subsection 14-250(2) in Schedule 1 to the *Taxation Administration Act 1953* as amended by this Schedule applies; and

(ii) one or more entities (not including the entity to which the supply is made), at least one of whom is supplying (or is to supply) development services in relation to the real property to which the supply relates;

deals with the distribution, between the parties to the arrangement, of the consideration for the supply; and

(b) under the arrangement:

(i) an amount is to be distributed to the supplier for the payment of the supplier's liability to GST for the supply (less any relevant entitlements to input tax credits); or

(ii) distributions of the consideration, between the parties, are to be adjusted to take into account that liability; and

(c) were that amount to be distributed under the arrangement, or were the distributions to be so adjusted, the parties would not be in the same position as they would be if an amount were

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not payable, under section 14-250 in that Schedule as so amended, in relation to the supply; and

(d) a payment has been made under that section in relation to the supply;

the amount of the payment is taken, for the purposes of the arrangement, to have been received by the supplier in relation to the supply.

[*Minister's second reading speech made in—*
House of Representatives on 7 February 2018
Senate on 19 March 2018]

(6/18)

Authorised Version C2018A00023