Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022

No. 14, 2022

An Act to amend the law relating to taxation, employee share schemes and product stewardship, to amend the *National Health Act 1953*, to provide for a one-off cost of living payment, and for related purposes

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

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Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022

No. 14, 2022

An Act to amend the law relating to taxation, employee share schemes and product stewardship, to amend the *National Health Act 1953*, to provide for a one-off cost of living payment, and for related purposes

[*Assented to 31 March 2022*]

The Parliament of Australia enacts:

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1 Short title

This Act is the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*.

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.	31 March 2022
2. Schedule 1	The day after this Act receives the Royal Assent.	1 April 2022
3. 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 2022
4. Schedule 4	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	30 September 2022
5. Schedule 5, Part 1	The day after this Act receives the Royal Assent.	1 April 2022
6. Schedule 5, Part 2	1 July 2027.	1 July 2027
7. Schedule 6	The day after this Act receives the Royal Assent.	1 April 2022
8. Schedule 7	1 July 2022.	1 July 2022
9. Schedule 8	The day after this Act receives the Royal Assent.	1 April 2022
10. Schedule 9	Immediately after the commencement of the	31 March 2022

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
	Excise Tariff Amendment (Cost of Living Support) Act 2022. However, the provisions do not commence at all if that Act does not commence.	

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.

Note: The provisions of the *Product Stewardship (Oil) Regulations 2000* amended or inserted by this Act, and any other provisions of those regulations, may be amended or repealed by regulations made under section 37 of the *Product Stewardship (Oil) Act 2000* (see subsection 13(5) of the *Legislation Act 2003*).

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Schedule 1—Medicare Levy and Medicare Levy Surcharge Income Thresholds

A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999

1 Paragraphs 15(1)(c) and 16(2)(c)

Omit "$23,226", substitute "$23,365".

Medicare Levy Act 1986

2 Subsection 3(1) (paragraph (a) of the definition of *phase-in limit*)

Omit "$45,881", substitute "$46,156".

3 Subsection 3(1) (paragraph (c) of the definition of *phase-in limit*)

Omit "$29,032", substitute "$29,206".

4 Subsection 3(1) (paragraph (a) of the definition of *threshold amount*)

Omit "$36,705", substitute "$36,925".

5 Subsection 3(1) (paragraph (c) of the definition of *threshold amount*)

Omit "$23,226", substitute "$23,365".

6 Subsection 8(5) (definition of *family income threshold*)

Omit "$39,167", substitute "$39,402".

7 Subsection 8(5) (definition of *family income threshold*)

Omit "$3,597", substitute "$3,619".

8 Subsections 8(6) and (7)

Omit "$39,167", substitute "$39,402".

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9 Subsection 8(7)

Omit “$51,094”, substitute “$51,401”.

10 Paragraph 8D(3)(c)

Omit “$23,226”, substitute “$23,365”.

11 Subparagraph 8D(4)(a)(ii)

Omit “$23,226”, substitute “$23,365”.

12 Paragraph 8G(2)(c)

Omit “$23,226”, substitute “$23,365”.

13 Subparagraph 8G(3)(a)(ii)

Omit “$23,226”, substitute “$23,365”.

14 Application of amendments

The amendments made by this Schedule apply to assessments for the 2021-22 year of income and later years of income.

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Schedule 2—Deductibility of COVID-19 tests

Income Tax Assessment Act 1997

1 Section 12-5 (after table item headed "copyrights")

Insert:

COVID-19

expenditure on COVID-19 tests 25-125

2 At the end of Division 25

Add:

25-125 COVID-19 tests

(1) You can deduct a loss or outgoing to the extent it is incurred in gaining or producing your assessable income if:
  (a) you are an individual; and
  (b) the loss or outgoing is incurred in respect of testing you for the novel coronavirus SARS-CoV-2 that causes COVID-19 using a test covered by subsection (3); and
  (c) the purpose of testing you is to determine whether you may attend or remain at a place where you:
    (i) engage in activities to gain or produce your assessable income; or
    (ii) engage in activities in the course of carrying on a *business for the purpose of gaining or producing your assessable income.

(2) However, you cannot deduct a loss or outgoing under this section to the extent that it is a loss or outgoing of capital, or of a capital nature.

(3) This subsection covers a test that:
  (a) is a polymerase chain reaction test; or
  (b) is a therapeutic good (within the meaning of the *Therapeutic Goods Act 1989*) that:
    (i) is included in the Australian Register of Therapeutic Goods maintained under section 9A of that Act; and

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(ii) has an intended purpose, accepted in relation to that inclusion, that relates to the detection of the novel coronavirus SARS-CoV-2 that causes COVID-19.

3 At the end of subsection 900-30(7)

Add:

; (d) a loss or outgoing you incur in relation to producing your salary or wages that entitles you to a deduction under section 25-125 (COVID-19 tests).

4 Application

The amendments made by this Schedule apply in relation to losses and outgoings incurred on or after 1 July 2021.

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Schedule 3—Deductible gift recipients—new specific recipients

Income Tax Assessment Act 1997

1 In the appropriate position in subsection 30-25(2) (table)

Insert:

2.2.54	The Australian Future Leaders Foundation Limited	the gift must be made after 30 June 2021
2.2.55	The Ramsay Centre for Western Civilisation Limited	the gift must be made after 30 June 2021

2 In the appropriate position in subsection 30-50(2) (table)

Insert:

5.2.37	Perth Korean War Memorial Committee Incorporated	the gift must be made after 30 June 2021 and before 1 July 2024

3 In the appropriate position in section 30-105 (table)

Insert:

13.2.31	Greek Orthodox Archdiocese of Australia Consolidated Trust Cathedral of the Annunciation of our Lady Restoration Fund	the gift must be made after 30 June 2021 and before 1 July 2024
13.2.32	Lord Mayor's Charitable Foundation	the gift must be made after 30 June 2021
13.2.33	Royal Humane Society of New South Wales Incorporated	the gift must be made after 30 June 2020

4 Section 30-315 (after table item 21)

Insert:

21AA	Australian Future Leaders Foundation	item 2.2.54

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	Limited	

5 Section 30-315 (after table item 52B)

Insert:

52BA	Greek Orthodox Archdiocese of Australia Consolidated Trust Cathedral of the Annunciation of our Lady Restoration Fund	item 13.2.31

6 Section 30-315 (after table item 68)

Insert:

68A	Lord Mayor's Charitable Foundation	item 13.2.32

7 Section 30-315 (after table item 84)

Insert:

84A	Perth Korean War Memorial Committee Incorporated	item 5.2.37

8 Section 30-315 (after table item 94AA)

Insert:

94AAA	Ramsay Centre for Western Civilisation Limited	item 2.2.55

9 Section 30-315 (after table item 103)

Insert:

103AA	Royal Humane Society of New South Wales Incorporated	item 13.2.33

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Schedule 4—Employee Share Schemes

Corporations Act 2001

1 Section 9 (paragraph (a) of the definition of *contribution plan*)

Repeal the paragraph, substitute:

(a) regular deductions are made from the wages or salary of an employee or director (the ***contributor***) to acquire financial products that are offered for issue or sale to the contributor under a scheme for employees or directors of a company to acquire any of the following financial products of the company:

(i) fully paid ordinary shares;

(ii) options, offered for no more than nominal consideration, for the issue or transfer of fully paid ordinary shares;

(iii) units in fully paid ordinary shares;

2 Section 9 (definition of *eligible employee share scheme*)

Repeal the definition.

3 Section 9

Insert:

employee share buy-back means a buy-back under a scheme that:

(a) has as its purpose the acquisition of shares in a company by, or on behalf of:

(i) employees of the company, or of a related body corporate; or

(ii) directors of the company, or a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; and

(b) has been approved by the company in general meeting.

4 Section 9 (definition of *employee share scheme*)

Repeal the definition, substitute:

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employee share scheme: see subsection 1100L(1).

5 Section 9 (definition of *employee share scheme buy-back*)

Repeal the definition.

6 Section 9

Insert:

ESS contribution plan: see section 1100T.

7 Section 9 (definition of *ESS interest*)

Repeal the definition, substitute:

ESS interest: see section 1100M.

8 Section 9

Insert:

ESS participant: see subsection 1100L(2).

incentive right: see subsection 1100M(4).

liquidity period, for an ESS interest: see subsection 1100ZB(7).

9 Section 9 (after paragraph (ma) of the definition of *managed investment scheme*)

Insert:

(maa) an ESS contribution plan for an offer of ESS interests that is eligible to be made under Division 1A of Part 7.12;

10 Section 9 (paragraph (d) of the definition of *selective buy-back*)

Repeal the paragraph, substitute:

(d) an employee share buy-back.

11 Paragraph 113(3)(a)

After “its shares”, insert “, or of options in respect of its shares,”.

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12 Subsection 257B(1) (table)

Omit "employee share scheme", substitute "employee share".

13 Subsection 257B(1) (note)

Omit "***employee share scheme buy-back***", substitute "***employee share buy-back***".

14 Section 703B (note)

Omit "Note", substitute "Note 1".

15 At the end of section 703B

Add:

Note 2: Division 1A of Part 7.12 (Employee share schemes) contains a separate regime for the making of offers in connection with employee share schemes. The provisions of this Part do not apply in relation to offers that are eligible to be made under that Division: see subsection 1100ZC(2) and section 1100ZD.

16 Subsection 708(5) (note)

Omit "Note", substitute "Note 1".

17 At the end of subsection 708(5)

Add:

Note 2: Issues and sales that result from offers that are eligible to be made under Division 1A of Part 7.12 (Employee share schemes) are also disregarded for the purposes of subsection (1): see subsection 1100ZC(4).

18 Subsection 709(5)

Omit "eligible".

19 Section 725A (note)

Omit "Note", substitute "Note 1".

20 At the end of section 725A

Add:

Note 2: Division 1A of Part 7.12 (Employee share schemes) contains a separate regime for the making of offers under employee share schemes. The provisions of this Part do not apply in relation to offers

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that are eligible to be made under that Division: see subsection 1100ZC(2) and section 1100ZD.

21 Paragraphs 911A(2)(ed), (ee), (ef) and (eg)

Repeal the paragraphs.

22 Subsection 911A(2) (note)

Omit "Note", substitute "Note 1".

23 At the end of subsection 911A(2)

Add:

Note 2: A person is also exempt from the requirement to hold an Australian financial services licence in relation to certain services connected with offers that are eligible to be made under Division 1A of Part 7.12 (Employee share schemes): see subsection 1100ZC(7).

24 At the end of subsection 992A(2)

Add:

Note 3: Subsection (1) also does not apply in relation to an offer that is eligible to be made under Division 1A of Part 7.12 (Employee share schemes): see subsection 1100ZC(8).

25 Paragraph 994B(3)(c)

Repeal the paragraph.

26 At the end of subsection 994B(3)

Add:

Note: Division 1A of Part 7.12 (Employee share schemes) contains a separate regime for the making of offers in connection with employee share schemes. Subsections (1) and (2) of this section do not apply in relation to securities that are issued, sold or transferred under an offer that is eligible to be made under that Division: see subsection 1100ZC(6).

27 Subsection 1010A(1) (note)

Omit "Note", substitute "Note 1".

28 At the end of subsection 1010A(1)

Add:

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Note 2: Division 1A of Part 7.12 (Employee share schemes) contains a separate regime for the making of offers in connection with employee share schemes. The provisions of this Part do not apply in relation to offers that are eligible to be made under that Division: see subsection 1100ZC(3) and section 1100ZD.

29 Section 1010BA (heading)

Repeal the heading, substitute:

1010BA Part does not apply to contribution plans and ESS contribution plans

30 At the end of section 1010BA

Add "or ESS contribution plans for offers of ESS interests that are eligible to be made under Division 1A of Part 7.12".

31 Subsection 1012E(8) (note)

Omit "Note", substitute "Note 1".

32 At the end of subsection 1012E(8)

Add:

Note 2: Issues and sales that result from offers that are eligible to be made under Division 1A of Part 7.12 (Employee share schemes) are also disregarded for the purposes of subsection (2): see subsection 1100ZC(4).

33 After Division 1 of Part 7.12

Insert:

Division 1A—Employee share schemes

Subdivision A—Introduction

1100E Simplified outline of this Division

This Division provides for regulatory relief for offers of interests (***ESS interests***) under an employee share scheme of:

(a) a body corporate; or

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(b) a registered scheme that meets certain listing requirements.

Offers may be made to:

(a) directors and employees of the body corporate or the responsible entity of the registered scheme; and

(b) directors and employees of an associated entity of the body corporate or the responsible entity of the registered scheme; and

(c) persons that provide services to the body corporate or responsible entity of the registered scheme.

Offers may also be made to certain related persons of directors, employees and service providers.

The regulatory relief consists of exemptions from the following requirements of this Act:

(a) the disclosure requirements for the issue, sale and transfer of securities (Parts 6D.2 and 6D.3) and financial products (Part 7.9);

(b) the restrictions on advertising of offers for the issue, sale and transfer of securities (section 734) or financial products (section 1018A);

(c) the requirement to make a target market determination for a financial product and distribute financial products in accordance with a target market determination (Part 7.8A);

(d) the requirement to hold an Australian financial services licence for a financial service provided in relation to the employee share scheme (section 911A);

(e) the prohibition on the hawking of financial products (section 992A).

An offer of ESS interests for no consideration is eligible to be made under this Division.

An offer of ESS interests for monetary consideration is eligible to be made under this Division if:

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(a) the proportion of shares covered by ESS interests that are offered complies with an issue cap; and
(b) the terms of the offer include certain terms; and
(c) streamlined disclosure requirements are met.

An offer of ESS interests by an unlisted body corporate must also generally comply with a monetary cap.

Regulatory relief is revoked if:
(a) an offer ceases to meet these requirements; or
(b) the body corporate or responsible entity of the scheme does not comply with a term of the offer dealing with disclosure.

An offer of ESS interests is also eligible to be made under this Division if it could otherwise have been made under section 708, 708AA, 1012D, 1012DAA or 1012DA.

There are offences for making material misleading statements in, or material omissions from, required disclosure documents and information.

1100F Geographical coverage of Division

This Division applies to offers of ESS interests that are received in this jurisdiction, regardless of where any resulting issue, sale or transfer occurs.

1100G Offers and invitations both covered

For the purposes of this Division:
(a) offering ESS interests for issue includes inviting applications for the issue of the ESS interests; and
(b) offering ESS interests for sale includes inviting offers to purchase the ESS interests.

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1100H Person offering interests

For the purposes of this Division, the person who offers ESS interests is the person who has the capacity, or who agrees, to issue or transfer the ESS interests if the offer is accepted.

1100J Offers may also be made in reliance on section 708 or 1012D

(1) The fact that a body corporate makes an offer of securities that is eligible to be made under this Division does not prevent the body corporate from also making an offer, in reliance on a provision of section 708, of securities that are of the same class as those offered under the first-mentioned offer.

Note: The interaction of this Division with section 708 is affected by section 1100R and subsection 1100ZC(4).

(2) The fact that a body corporate or responsible entity of a registered scheme makes an offer of financial products that is eligible to be made under this Division does not prevent the body corporate or responsible entity from also making an offer, in reliance on a provision of section 1012D, of financial products that are of the same kind as those offered under the first-mentioned offer.

Note: The interaction of this Division with section 1012D is affected by section 1100R.

1100K Financial markets recognised under this Division

(1) For the purposes of this Division, the following financial markets are covered by this section:
  (a) a financial market operated by a market licensee;
  (b) a foreign financial market determined by ASIC under subsection (2).

(2) ASIC may, by legislative instrument, determine one or more foreign financial markets for the purposes of this section.

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Subdivision B—Key concepts

1100L Meaning of *employee share scheme*

Meaning of employee share scheme

(1) An ***employee share scheme*** of a body corporate, or of a registered scheme that is included in the official list of a financial market covered by section 1100K, means a scheme under which an ESS interest of the body corporate or registered scheme may be issued, sold or transferred to:

(a) a person (a ***primary participant***) who is:

(i) an employee or director of, or an individual who provides services to, the body corporate or the responsible entity of the registered scheme; or

(ii) an employee or director of, or an individual who provides services to, an associated entity of the body corporate or of the responsible entity of the registered scheme, where that associated entity is a body corporate; or

(iii) a prospective person to whom subparagraph (i) or (ii) may apply; or

(iv) a person prescribed by the regulations for the purposes of this subparagraph; or

(b) another person (a ***related person***) on behalf of a primary participant, where the related person is:

(i) a spouse, parent, child or sibling of the primary participant; or

(ii) another body corporate controlled by the primary participant or a person mentioned in subparagraph (i); or

(iii) a body corporate that is the trustee of a self managed superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) where the primary participant is a director of the body corporate; or

(iv) a person prescribed in relation to the primary participant by the regulations for the purposes of this subparagraph.

Note: An ESS participant who is an employee may be entitled to certain protections, conditions and minimum wages under the *Fair Work Act*

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2009, and protections under other laws of the Commonwealth, including section 31 of Schedule 2 to the *Competition and Consumer Act 2010* (misleading conduct relating to employment).

*Meaning of **ESS participant***

(2) A person is an ***ESS participant*** in an employee share scheme if the person is:

(a) a primary participant mentioned in paragraph (1)(a) in relation to the scheme; or

(b) a related person mentioned in paragraph (1)(b) in relation to the scheme.

1100M Meaning of *ESS interest*

Bodies corporate included in the official list of a financial market

(1) An ***ESS interest***, in a body corporate that is included in the official list of a financial market covered by section 1100K, means any of the following:

(a) a fully paid share in the body corporate that is in a class of shares that is able to be traded on the financial market;

(b) a beneficial interest in a fully paid share in the body corporate where the beneficial interest is in a class of interests that is able to be traded on the financial market;

(c) a fully paid share in the body corporate that is convertible into an interest referred to in paragraph (b), where the conversion can be made without charge or for a nominal fee;

(d) a beneficial interest in a fully paid share in the body corporate that is convertible into an interest referred to in paragraph (a), where the conversion can be made without charge or for a nominal fee;

(e) a unit in an interest mentioned in any of paragraphs (a), (b), (c) or (d);

(f) a fully paid stapled security that is in a class of stapled securities that is able to be traded on the financial market, that consists of 2 or more interests, each of which would separately be:

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(i) an ESS interest under any of paragraphs (a) to (e) of the body corporate, or of an associated entity of the body corporate; or

(ii) an ESS interest under paragraph (3)(a) or (b) in a registered scheme, where the responsible entity of the scheme is an associated entity of the body corporate;

(g) a unit in a stapled security mentioned in paragraph (f);

(h) an incentive right granted in relation to, or an option to acquire, an interest mentioned in any of paragraphs (a), (b), (c), (d) or (f) (the ***underlying ESS interest***);

(i) any other interest in the body corporate prescribed by the regulations for the purposes of this paragraph.

Meaning of ESS interest in other bodies corporate

(2) An ***ESS interest***, in a body corporate to which subsection (1) does not apply, means:

(a) a fully paid share in the body corporate; or

(b) a unit in an interest mentioned in paragraph (a); or

(c) an incentive right granted in relation to, or an option to acquire, an interest mentioned in paragraph (a) (the ***underlying ESS interest***); or

(d) any other interest in the body corporate prescribed by the regulations for the purposes of this paragraph.

Meaning of ESS interest in a registered scheme

(3) An ***ESS interest***, in a registered scheme that is included in the official list of a financial market covered by section 1100K, means:

(a) an interest in the scheme that is of the same kind as an interest in the scheme that is able to be traded on the financial market; or

(b) a unit in an interest mentioned in paragraph (a); or

(c) an incentive right granted in relation to, or an option to acquire, an interest mentioned in paragraph (a) (the ***underlying ESS interest***); or

(d) any other interest in the scheme prescribed by the regulations for the purposes of this paragraph.

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Meaning of incentive right

(4) ***Incentive right***, in relation to a security or financial product, means:

(a) a conditional right to acquire the security or financial product; or

(b) a conditional right to be paid a cash amount where the amount is determined (wholly or in part) with reference to any of the following:

(i) the price or value of the security or financial product at a particular time;

(ii) the change in the price or value of the security or financial product over a particular period;

(iii) the amount of dividends or distributions paid in respect of the security or financial product at a particular time;

(iv) the change in the amount of dividends or distributions paid in respect of the security or financial product over a particular period; or

(c) a conditional right to:

(i) acquire the security or financial product; and

(ii) be paid a cash amount where the amount is determined (wholly or in part) with reference to any of the matters mentioned in subparagraphs (b)(i) to (iv).

Subdivision C—Offers that are eligible to be made under this Division

1100N Offers that are eligible to be made under this Division

An offer for the issue, sale or transfer of ESS interests of a body corporate or registered scheme to ESS participants in connection with an employee share scheme is eligible to be made under this Division if:

(a) the offer is covered by any of the following:

(i) section 1100P (about offers for no monetary consideration);

(ii) section 1100Q (about offers for monetary consideration);

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(iii) section 1100R (about offers that would otherwise not need disclosure); and

(b) the offer is expressed to be made under this Division.

1100P Offers for no monetary consideration

An offer for the issue or transfer of ESS interests of a body corporate or registered scheme to ESS participants in connection with an employee share scheme is covered by this section if:

(a) no monetary consideration is to be provided for the issue or transfer of the interests; and

(b) if the offer is of options or incentive rights—no monetary consideration is to be provided on the exercise of the options or rights; and

(c) any trust that may issue or transfer ESS interests under the scheme meets the requirements in section 1100S; and

(d) the offer meets any requirements prescribed in the regulations for the purposes of this paragraph.

1100Q Offers for monetary consideration

(1) An offer for the issue, sale or transfer of ESS interests to ESS participants in connection with an employee share scheme of a body corporate or registered scheme is covered by this section if:

(a) either or both of the following apply:

(i) the interests are offered for issue or sale in return for monetary consideration, and the interests will be acquired by the ESS participant who pays for the interests;

(ii) the interests are options or incentive rights and monetary consideration is to be provided on the exercise of the options or rights; and

(b) any trust that may issue or transfer ESS interests under the scheme meets the requirements in section 1100S; and

(c) any plan under which an ESS participant may acquire ESS interests by making regular payments, or having regular deductions made from the participant's salary or wages, is an ESS contribution plan for the offer (see section 1100T); and

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(d) any loan offered by the body corporate or relevant responsible entity, or an associated entity of the body corporate or responsible entity, in connection with the scheme complies with section 1100U; and

(e) the offer complies with the issue cap (see section 1100V); and

(f) the offer complies with section 1100W (about disclosure); and

(g) the terms of the offer comply with sections 1100Y and 1100Z; and

(h) the offer meets any additional requirements prescribed in the regulations for the purposes of this paragraph.

Additional requirements for unlisted bodies corporate

(2) However, if the offer is of ESS interests in a body corporate that is not included in the official list of a financial market covered by section 1100K, the offer is not eligible to be made under this Division unless:

(a) if the interests are offered for issue or sale in return for monetary consideration—the offer is accompanied by the supporting information required by section 1100X; and

(b) the offer complies with section 1100ZA (about the monetary cap); and

(c) the offer meets any additional requirements prescribed in the regulations for the purposes of this paragraph.

1100R Offers that would otherwise not need disclosure

Offers other than small scale offerings

(1) An offer for the issue, sale or transfer of ESS interests to ESS participants in connection with an employee share scheme of a body corporate or registered scheme is covered by this section if:

(a) the offer would not require disclosure to any investor under Part 6D.2 (if that Part otherwise applied to the offer) because of section 708 (apart from subsection 708(1) or (15)) or 708AA; or

(b) the offer would not require any person to be given a Product Disclosure Statement under Part 7.9 (if that Part otherwise

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applied to the offer) because of section 1012D (apart from subsection 1012D(5) or (6)), 1012DAA or 1012DA.

Note: This subsection puts beyond doubt that the no consideration exemptions from disclosure in subsections 708(15) and 1012D(5) and (6) cannot be used to exempt an offer of ESS interests from disclosure under Part 6D.2 or 7.9.

Small scale offerings

(2) An offer for the issue, sale or transfer of ESS interests to ESS participants in connection with an employee share scheme of a body corporate or registered scheme is covered by this section if:

(a) either:

(i) the offer would not require disclosure to any investor under Part 6D.2 (if that Part otherwise applied to the offer) because of subsection 708(1); or

(ii) the offer would not require any person to be given a Product Disclosure Statement under Part 7.9 (if that Part otherwise applied to the offer) because of subsection 1012E(2); and

(b) any trust that may issue or transfer ESS interests under the scheme meets the requirements in section 1100S; and

(c) any plan under which an ESS participant may acquire ESS interests by making regular payments, or having regular deductions made from the participant's salary or wages, is an ESS contribution plan for the offer (see section 1100T); and

(d) any loan offered by the body corporate or relevant responsible entity, or an associated entity of the body corporate or responsible entity, in connection with the scheme complies with section 1100U.

1100S Requirements for trusts

(1) A trust meets the requirements in this section for an employee share scheme of a body corporate or registered scheme under which an ESS interest may be issued or transferred by the trustee of the trust if:

(a) the trust is covered by subsection (2); and

(b) either:

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(i) the trustee acquires the ESS interest in connection with the employee share scheme for the purposes of the trustee transferring the ESS interest to an ESS participant; or

(ii) if the ESS interest is a unit in another ESS interest—the trustee acquires the other ESS interest in connection with the employee share scheme for the purposes of the trustee issuing or transferring the unit to an ESS participant.

(2) A trust is covered by this subsection if the trust deed of the trust:

(a) provides that, in its capacity as trustee of the trust, the activities of the trustee are limited to managing employee share schemes of the body corporate or registered scheme referred to in subsection (1); and

(b) requires the trustee of the trust to keep written records on the administration of the trust; and

(c) prevents the trustee of the trust charging any fees or charges for administering the trust, other than:

(i) reasonable disbursements charged to the trust; or

(ii) amounts charged to the body corporate or responsible entity of the registered scheme; and

(d) if the trustee of the trust is an associated entity of the body corporate or the relevant responsible entity—provides that the trustee may only exercise voting rights associated with the ESS interests in accordance with the instructions of the holder of the interests or consistent with the trustee's fiduciary duties; and

(e) contains terms that meet any requirements prescribed in the regulations for the purposes of this paragraph.

1100T Meaning of ESS contribution plan

An ***ESS contribution plan***, for an offer for the issue or sale of ESS interests, means a plan with terms that:

(a) allow an ESS participant to make regular payments, or elect to have regular deductions made from their wages or salary, for the purpose of acquiring the ESS interests under the offer; and

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(b) provide that, before the participant acquires the ESS interests under the offer, the payments or deductions are held on trust in an account with an Australian ADI that is kept solely for that purpose; and

(c) allow the participant to elect to discontinue the deductions or payments at any time; and

(d) provide that, if the participant so elects:

(i) any deductions from the participant's wages or salary will cease, and any deductions made after the election will be repaid to the participant, within 45 days of the election; and

(ii) the amount of the deductions or payments standing, at the time when the election is made, to the credit of the account for the participant, and any interest on that amount, will be repaid to the participant within 45 days of the election; and

(e) require the participant to agree in writing to the terms of the plan before participating in the plan; and

(f) meet any requirements prescribed in the regulations for the purposes of this paragraph.

1100U Requirements for connected loans

(1) A loan offered by a body corporate or responsible entity, or an associated entity of a body corporate or responsible entity, in connection with an employee share scheme complies with this section if:

(a) the loan is offered on the following terms:

(i) that the loan has no interest or fees payable;

(ii) that the rights of the body corporate, responsible entity or associated entity as against the ESS participant, in the event of default in payment of the loan, are wholly limited to forfeiture of the ESS interests acquired using the loan; and

(b) the borrower is the ESS participant who will acquire ESS interests offered under the employee share scheme; and

(c) the terms of the loan meet any requirements prescribed in the regulations for the purposes of this paragraph.

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Additional requirement for unlisted bodies corporate

(2) However, if the offer is of ESS interests in a body corporate that is not included in the official list of a financial market covered by section 1100K, a loan does not comply with this section if it is offered or made by the body corporate to any ESS participant who, at the time the loan is offered or made (as the case may be), is a shareholder of the body corporate.

1100V Issue cap for offers involving consideration

(1) An offer of ESS interests in a body corporate or registered scheme complies with the issue cap if, at the time the offer is made, the body corporate or responsible entity of the registered scheme reasonably believes:

(a) the total number of fully paid shares in the body corporate or interests in the registered scheme that are, or are covered by, the ESS interests of the body corporate or scheme that may be issued under the offer; and

(b) the total number of fully paid shares in the body corporate or interests in the registered scheme that are, or are covered by, the ESS interests that have been issued, or could have been issued, under offers made in connection with the employee share scheme at any time during the 3 year period ending on the day the offer is made;

does not exceed the percentage referred to in subsection (2) of the number of those fully paid shares or interests actually issued by the body corporate or scheme (whether in connection with the employee share scheme or otherwise) as at the start of the day the offer is made.

(2) The percentage is:

(a) if the constitution of the body corporate or registered scheme specifies an issue cap percentage—that percentage; or

(b) if paragraph (a) does not apply—the greater of the following:

(i) for a body corporate or registered scheme that is included in the official list of a financial market covered by section 1100K—5%;

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(ii) for a body corporate that is not included in the official list of a financial market covered by section 1100K—20%;

(iii) the percentage (if any) prescribed by the regulations for the purposes of this subparagraph.

Modification for stapled securities

(3) However, if the ESS interest is, or covers, a stapled security, then:

(a) each body corporate or registered scheme mentioned in paragraph 1100M(1)(f) in relation to an interest that comprises the stapled security is treated as offering that interest; and

(b) to comply with the issue cap, subsection (1) must be satisfied in relation to each of those offers.

1100W Disclosure requirements for offers involving consideration

(1) An offer of ESS interests in connection with an employee share scheme complies with this section if the offer is made in, or accompanied by, a document that meets the requirements of subsections (2) and (3).

ESS offer document

(2) A document (an ***ESS offer document***) meets the requirements of this subsection for an offer of ESS interests in connection with an employee share scheme if the document:

(a) includes the terms of the offer, or a summary of the terms of the offer with a statement that, on request, a copy of the full terms of the offer will be provided to the ESS participant; and

(b) provides general information about the risks of acquiring and holding the ESS interests being offered; and

(c) states that advice given in relation to the offer does not take into account the ESS participant's objectives, financial situation and needs; and

(d) suggests that the ESS participant obtain personal advice in relation to the offer; and

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(e) states the period (the ***application period***) during which the ESS participant may accept the offer; and

(f) for an employee share scheme of a body corporate that is included in the official list of a financial market covered by section 1100K:

(i) states either the acquisition price of the ESS interests or, if the acquisition price will be determined at a future date, how the acquisition price will be determined; and

(ii) explains how the ESS participant may ascertain the market price of the shares or, if beneficial interests, units, options or incentive rights are offered, how the ESS participant may ascertain the market price of the underlying ESS interest; and

(g) if ESS interests may be acquired under the offer using a loan or ESS contribution plan—includes:

(i) the terms of the loan or plan; or

(ii) a summary of the terms of the loan or plan and a statement that, on request, a copy of the terms of the plan or loan will be provided to the ESS participant; and

(h) if ESS interests will be held on trust for ESS participants (other than by a body corporate of the kind mentioned in subparagraph 1100L(1)(b)(iii) (which is about self managed superannuation funds))—includes:

(i) the trust deed; or

(ii) a summary of the trust deed and a statement that, on request, a copy of the full deed will be provided to the ESS participant; and

(i) includes, or directs the participant to, any of the following documents (if they exist) that relate to the same class of ESS interests as those being offered:

(i) a disclosure document prepared under Part 6D.2 in relation to an offer of securities, where that offer was made in the 12 months before the start of the application period;

(ii) a Product Disclosure Statement prepared under Part 7.9 in relation to an offer of financial products for issue or sale, where that offer was made in the 12 months before the start of the application period; and

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(j) includes any other information prescribed by the regulations for the purposes of this paragraph.

Additional requirement for unlisted bodies corporate

(3) If the offer is of ESS interests in a body corporate that is not included in the official list of a financial market covered by section 1100K, the ESS offer document must also include the following:

(a) a statement that the ESS interests may not have any value and that the value of the ESS interests will depend on future events that may not occur;

(b) if the ESS interests are:

(i) shares that are not ordinary shares; or

(ii) units in, incentive rights granted in relation to, or options to acquire, shares that are not ordinary shares;

a description of the rights that attach to the shares, and how the shares differ from ordinary shares.

Regulations may provide other ways of complying with this section

(4) An offer also complies with this section if the offer is of a kind prescribed by the regulations for the purposes of this subsection.

1100X Additional disclosure requirements for offers by unlisted bodies corporate

Supporting information for offers by unlisted bodies corporate

(1) The supporting information required by this section is:

(a) the financial information mentioned in subsection (2), accompanied by a statement as to whether that financial information has been audited; and

(b) a document covered by subsection (3) (about valuations) in relation to the ESS interests being offered; and

(c) a statement that the body corporate is solvent; and

(d) any other financial information prescribed by the regulations for the purposes of this paragraph.

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Financial information

(2) The financial information is:

(a) if the body corporate must lodge a report for a financial year with ASIC under section 319—a copy of the most recent report lodged with ASIC; or

(b) if the body corporate is a registered foreign company—a copy of the most recent documents lodged with ASIC under section 601CK; or

(c) otherwise—a balance sheet and profit and loss statement prepared in compliance with either the accounting standards or the international accounting standards (within the meaning of the *Australian Securities and Investments Commission Act 2001*).

Valuation information

(3) This subsection covers the following documents:

(a) a copy of a valuation of the ESS interest that has been prepared consistently with an applicable method approved by the Commissioner of Taxation under section 960-412 of the *Income Tax Assessment Act 1997*;

(b) if securities in the same class as the ESS interests are on offer at the same time as the ESS interests—a disclosure document for that offer that has been lodged with ASIC as mentioned in section 727;

(c) if financial products in the same class as the ESS interests are on offer at the same time as the ESS interests—a disclosure document or statement (within the meaning of section 952B) in relation to those financial products;

(d) a copy of an executed agreement under which ESS interests in the same class as the ESS interests are to be acquired on arm's length terms by a third party who is not an associate of the person making the offer, where the agreement specifies the amount of monetary consideration to be paid for an ESS interest in that class;

(e) a copy of a draft agreement under which ESS interests in the same class as the ESS interests are to be acquired on arm's length terms by a third party who is not an associate of the person making the offer, where the agreement specifies the

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amount of monetary consideration to be paid for an ESS interest in that class;

(f) a document prescribed by the regulations for the purposes of this paragraph.

1100Y Terms of the offer—disclosure etc.

(1) The terms of an offer of ESS interests in connection with an employee share scheme comply with this section if, under those terms:

(a) an ESS participant cannot acquire an ESS interest under the offer until at least 14 days after receiving the ESS offer document and any supporting information required under section 1100X (if applicable) for the offer; and

(b) if the ESS offer document included only a summary of the terms of the offer—the person who makes the offer must provide an ESS participant with a copy of the full terms of the offer within 10 business days of the ESS participant requesting a copy of those full terms; and

(c) if the ESS offer document included only a summary of the terms of a loan or ESS contribution plan—the person who makes the offer must provide an ESS participant with a copy of the full terms of the loan or plan within 10 business days of the ESS participant requesting a copy of those full terms; and

(d) if the ESS offer document included only a summary of a trust deed—the person who makes the offer must provide an ESS participant with a copy of the full trust deed within 10 business days of the ESS participant requesting a copy of the full trust deed; and

(e) if the offer is made by a trustee of a trust that meets the requirements of section 1100S—the trustee must comply with the trust deed.

Note: If an offer contravenes a term mentioned in this subsection, or subsection (3) or (4) (if applicable), regulatory relief for the offer is revoked: see section 1100ZG.

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Additional requirements for unlisted bodies corporate

(2) Subsections (3) and (4) apply if the offer is of ESS interests in a body corporate that is not included in the official list of a financial market covered by section 1100K.

(3) The terms of the offer must also provide that, if the ESS participant is given a draft sale agreement in satisfaction of paragraph 1100X(3)(e) (about valuations), the ESS participant cannot acquire an ESS interest until a sale agreement that is not materially different from the draft sale agreement has been executed.

(4) If the offer is of options or incentive rights, and monetary consideration is to be provided on the exercise of the options or incentive rights, the terms of the offer must also be such that:

(a) the options cannot be exercised, or the incentive rights cannot vest, unless the following documents are provided to the ESS participant at least 14 days before the exercise of the option or vesting of the incentive right:

(i) the financial information mentioned in subsection 1100X(2), accompanied by a statement as to whether that financial information has been audited;

(ii) a document covered by subsection 1100X(3) (about valuations) in relation to the underlying ESS interest;

(iii) a statement that the body corporate is solvent;

(iv) any other information prescribed by the regulations for the purposes of this subparagraph; and

(b) the person who made the offer must provide the ESS participant with the information mentioned in paragraph (a) at least 14 days before the option becomes exercisable or the incentive right vests; and

(c) if the ESS participant is given a draft sale agreement in satisfaction of subparagraph (a)(ii)—the ESS participant cannot exercise the option or right until a sale agreement that is not materially different from the draft sale agreement has been executed.

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Regulations may provide other ways of complying with this section

(5) An offer also complies with this section if the offer is of a kind prescribed by the regulations for the purposes of this subsection.

1100Z Terms of the offer—misleading statements and omissions

(1) The terms of an offer of ESS interests in connection with an employee share scheme comply with this section if, under those terms:

(a) the ESS offer document, any supporting information required under section 1100X (if applicable), and the terms of the offer:

(i) must not include a misleading or deceptive statement; and

(ii) must not omit any information that would result in the ESS offer document, supporting information or terms of the offer being misleading or deceptive; and

(b) the person who makes the offer (the ***offeror***) must provide each ESS participant with an updated ESS offer document as soon as practicable after becoming aware that the document that was provided has become out of date, or is otherwise not correct, in a material respect; and

(c) if the offer is of options or incentive rights and monetary consideration is to be provided on the exercise of the options or incentive rights—the offeror must provide each ESS participant with updated documents in satisfaction of paragraph 1100Y(4)(a) as soon as practicable after becoming aware that the information that was provided has become out of date, or is otherwise not correct, in a material respect; and

(d) each person mentioned in items 2, 3 and 4 of the table in subsection (2) must notify, in writing, the offeror as soon as practicable if, during the application period for the offer mentioned in paragraph 1100W(2)(e), the person becomes aware that:

(i) a material statement in the documents mentioned in paragraph (a) is misleading or deceptive; or

(ii) information was omitted from any of those documents that has resulted in one or more of those documents being misleading or deceptive; or

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(iii) a new circumstance has arisen during the application period which means the ESS offer document is out of date, or otherwise not correct, in a material respect; and

(e) if the offer is of options or incentive rights and monetary consideration is to be provided on the exercise of the options or incentive rights—each person mentioned in items 2, 3 and 4 of the table in subsection (2) must notify, in writing, the offeror as soon as practicable if, after the documents mentioned in paragraph 1100Y(4)(a) have been provided to an ESS participant in accordance with that paragraph, the person becomes aware that:

(i) a material statement in the documents is misleading or deceptive; or

(ii) information was omitted from any of the documents that has resulted in one or more of those documents being misleading or deceptive; or

(iii) a new circumstance has arisen since the documents were provided to an ESS participant which means the documents are out of date, or otherwise not correct, in a material respect; and

(f) an ESS participant who suffers loss or damage because of a contravention of a term of the offer covered by paragraph (a), (b), (c), (d) or (e) of this subsection can recover the amount of loss or damage in accordance with the table in subsection (2).

(2) For the purposes of paragraph (1)(f), an ESS participant must be able to recover loss or damage in accordance with the following table:

Item	An ESS participant may recover loss or damage suffered as a result of a contravention of …	from these people …
1	a term of the offer covered by any of the following paragraphs: (a) paragraph (1)(a) (misleading or deceptive statements and omissions);	the body corporate or responsible entity making the offer

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Item	An ESS participant may recover loss or damage suffered as a result of a contravention of …	from these people …
	(b) paragraph (1)(b) (out of date ESS offer document); (c) paragraph (1)(c) (out of date option or incentive right information)	
2	a term of the offer covered by any of the following paragraphs: (a) paragraph (1)(a) (misleading or deceptive statements and omissions); (b) paragraph (1)(b) (out of date ESS offer document); (c) paragraph (1)(c) (out of date option or incentive right information)	each director of the body corporate or responsible entity making the offer
3	a term of the offer covered by any of the following paragraphs: (a) paragraph (1)(a) (misleading or deceptive statements and omissions); (b) paragraph (1)(b) (out of date ESS offer document); (c) paragraph (1)(c) (out of date option or incentive right information)	a person named, with their consent, in an ESS offer document, any supporting information required under section 1100X (if applicable) or the terms of the offer as a proposed director of the body corporate or responsible entity of a registered scheme whose ESS interests are being offered
4	a term of the offer covered by paragraph (1)(a) (misleading or deceptive statements and omissions)	a person named, with their consent, in the ESS offer document, any supporting information required under section 1100X (if applicable) or the terms of the offer as having made: (a) the misleading or deceptive statement; or (b) a statement on which the misleading or deceptive statement is based
5	a term of the offer covered by paragraph (1)(d) or (e) (failure to	the person mentioned in item 2, 3 or 4 of this table who failed to notify the body

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Item	An ESS participant may recover loss or damage suffered as a result of a contravention of …	from these people …
	notify body corporate or responsible entity of misleading or deceptive statement and omissions or new circumstances)	corporate or responsible entity in accordance with the term covered by paragraph (1)(d) or (e)

Note: Item 2—***director*** includes a shadow director (see section 9).

Additional terms of the offer—no liability terms

(3) The terms of the offer may also include terms to the effect that a person mentioned in the table in subsection (2) is not liable for any loss or damage suffered by an ESS participant because of a contravention of a term of the offer covered by paragraph (1)(a), (b) or (c) if:

(a) the person:

(i) made all inquiries (if any) that were reasonable in the circumstances; and

(ii) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive; or

(b) the person did not know that the statement was misleading or deceptive; or

(c) the person placed reasonable reliance on information given to the person by:

(i) if the person is a body corporate or a responsible entity of a registered scheme—someone other than a director, employee or agent of the body corporate or responsible entity; or

(ii) if the person is an individual—someone other than an employee or agent of the individual; or

(d) for a person mentioned in column 2 of item 3 or 4 of the table in subsection (2)—the person proves that they publicly withdrew their consent to being named in the document in that way; or

(e) the contravention arose because of a new circumstance that has arisen since the ESS offer document was prepared and the person proves that they were not aware of the matter.

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(4) The terms of the offer must not limit liability of a person mentioned in the table in subsection (2) in any way other than as required by subsection (3).

1100ZA Monetary cap for offers by unlisted bodies corporate

(1) An offer complies with this section if it is made on terms that could not result in a breach of the monetary cap for any primary participant in relation to the scheme for:
   (a) the 12-month period starting on the day that an offer was first accepted by the participant or a related person of the participant in connection with the scheme; or
   (b) any subsequent 12-month period starting immediately after the end of the previous 12-month period.

Note 1: For who is a primary participant in an employee share scheme, see paragraph 1100L(1)(a).

Note 2: For who is a related person of a primary participant, see paragraph 1100L(1)(b).

(2) The offer breaches the monetary cap for a 12-month period if the amount worked out under subsection (3) for the participant for the period exceeds the monetary cap worked out under subsection (5) for the participant for the period.

Amounts that use up the cap

(3) The amount worked out under this subsection for a 12-month period is the sum of the following amounts, worked out in accordance with subsection (4):
   (a) the maximum amount the participant could pay in the 12-month period under the terms of any offer made in connection with any employee share scheme operated by the body corporate or an associate of the body corporate;
   (b) the maximum amount that could be paid by related persons of the participant in the 12-month period under the terms of any offer made in connection with any employee share scheme operated by the body corporate or an associate of the body corporate.

(4) In working out amounts under subsection (3):

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(a) subject to paragraph (b), include amounts payable on the exercise of options and incentive rights, and amounts paid out of any related ESS contribution plan; and

(b) do not include any amounts that are excluded from the monetary cap under section 1100ZB.

Amount of the monetary cap

(5) The monetary cap for a primary participant for a 12-month period (the ***current period***) is the sum of:

(a) the amount referred to in subsection (6); and

(b) 70 per cent of the amount of any distributions received in the current period by the participant or a related person on an ESS interest acquired under the scheme (whether under the offer mentioned in subsection (1) or under another offer); and

(c) 70 per cent of the amount of any cash remuneration received in the current period by the participant, to the extent the remuneration was conditional on the achievement of objectives; and

(d) if the current period is not the first 12-month period—the sum of any amount carried forward under subsection (7) for each previous 12-month period that started:

(i) at or after the start of the first 12-month period; and

(ii) not earlier than 4 years before the start of the current period.

(6) The amount (the ***basic cap amount***) is:

(a) unless paragraph (b) applies—$30,000; or

(b) if an amount is prescribed in the regulations for the purposes of this paragraph—that amount.

Carry-forward of unused cap

(7) If the amount worked out for a 12-month period by:

(a) starting with the lesser of:

(i) the basic cap amount; and

(ii) the amount that would be worked out under subsection (3) and in accordance with subsection (4), if the only amounts included were amounts payable on the exercise of options and incentive rights; and

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(b) subtracting the total amount paid in the 12-month period by the participant and each related person under the terms of any offer made in connection with any employee share scheme operated by the body corporate or an associate of the body corporate on the exercise of options and incentive rights;

is greater than nil, then that amount is carried forward for the purposes of paragraph (5)(d).

Regulations may provide other ways of complying with this section

(8) An offer also complies with this section if the offer is of a kind prescribed by the regulations for the purposes of this subsection.

1100ZB Amounts that are excluded from the monetary cap

(1) Each amount mentioned in a subsection of this section is not included in working out under section 1100ZA whether an offer breaches the monetary cap.

(2) An amount paid into an ESS contribution plan for the offer.

(3) An amount payable by a participant or related person for the issue or sale of ESS interests to the extent that, under the terms of the offer, the amount can only become payable during a liquidity period for the ESS interests.

(4) An amount payable on the exercise of options or incentive rights to the extent that, under the terms of the offer, the amount can only become payable during a liquidity period for the underlying ESS interests.

(5) An amount payable by an ESS participant for the issue or sale of ESS interests to the extent that, under the terms of the offer:

(a) the amount can only become payable no longer than 7 days before the start of a liquidity period for the ESS interests; and

(b) all application money received from ESS participants before the start of a liquidity period must be held on trust for the ESS participants until:

(i) the start of the liquidity period; or

(ii) the money is returned to the ESS participants; and

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(c) if application money needs to be returned to an ESS participant, it must be returned as soon as practicable.

(6) An amount payable by an ESS participant on the exercise of options or incentive rights to the extent that, under the terms of the offer:

(a) the amount can only become payable no longer than 7 days before the start of a liquidity period for the underlying ESS interests; and

(b) all application money received from ESS participants before the start of a liquidity period must be held in trust for the ESS participants until:

(i) the start of the liquidity period; or

(ii) the money is returned to the ESS participants; and

(c) if application money needs to be returned to an ESS participant, it must be returned as soon as practicable.

Liquidity period for ESS interests

(7) A ***liquidity period*** for an ESS interest is a period during which:

(a) the ESS interest is in a class of interests that is able to be traded on the official list of a financial market covered by section 1100K; or

(b) an executed sale agreement constituting an offer to acquire ESS interests in the same class as the ESS interest is open for acceptance; or

(c) a circumstance prescribed by the regulations for the purposes of this paragraph exists.

Regulations may prescribe other amounts

(8) The regulations may prescribe an amount for the purposes of this subsection.

Subdivision D—Making offers under this Division

1100ZC Making offers under this Division

(1) This section applies (subject to section 1100ZG) in relation to an offer for the issue, sale or transfer of ESS interests in connection

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with an employee share scheme if the offer is eligible to be made under this Division (see Subdivision C).

Relief relating to disclosure

(2) Parts 6D.2 and 6D.3 do not apply in relation to the offer.

(3) Part 7.9 does not apply in relation to the offer, or any issue or sale of the interest to an ESS participant under the offer.

(4) Unless the issue or sale is eligible to be made under this Division only because of subsection 1100R(2), issues and sales of securities or financial products that result from the offer are to be disregarded when counting issues and sales, and the amount raised from issues and sales, for the purposes of subsection 708(1) (for securities) and 1012E(2) (for financial products).

(5) Section 1012A (about disclosure in relation to personal advice) does not apply in relation to financial product advice relating to the offer.

(6) Part 7.8A (about the design and distribution requirements relating to financial products for retail clients) does not apply in relation to the issue, sale or transfer of a security that is an ESS interest under the offer.

Relief relating to Australian financial services licensing

(7) A person is exempt from the requirement under subsection 911A(1) to hold an Australian financial services licence for a financial service they provide if:

(a) the service:

(i) is the provision of general advice by the person in connection with the offer; or

(ii) is, or is provided incidentally to, a custodial or depository service that is provided by the person in connection with the offer; or

(iii) the service is issuing or dealing in a financial product by the person in connection with the offer; or

(iv) is dealing in an interest in an ESS contribution plan for the offer; and

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(b) the person is:
  (i) the body corporate or the responsible entity of the registered scheme to which the offer relates; or
  (ii) an associated entity of that body corporate or responsible entity.

Relief relating to hawking of financial products

(8) Subsection 992A(1) does not apply in relation to the offer.

1100ZD Regulatory relief for certain subsequent sale offers of ESS interests

The provisions of Part 6D.2, 6D.3 and 7.9 do not apply in relation to an offer of ESS interests in a body corporate or registered scheme for sale if:

(a) the body corporate or scheme operates an employee share scheme; and

(b) the person making the offer reasonably believes that:
  (i) the person acquired the interests under the employee share scheme; and
  (ii) the person is making the offer only to persons who are ESS participants in relation to the body corporate or registered scheme.

1100ZE Dealing with money received before ESS interest is issued

(1) If a person offers ESS interests for issue or sale to an ESS participant in connection with an employee share scheme, the person must hold:

(a) all application money received from ESS participants applying for ESS interests in connection with the employee share scheme; and

(b) all other money paid by them on account of the ESS interests before they are issued or transferred;

in trust under this section for the ESS participants until:

(c) the ESS interests are issued or transferred; or

(d) the money is returned to the ESS participants.

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(2) If the application money needs to be returned to an ESS participant, the person must return the money as soon as practicable.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

1100ZF Dealing with money received before liquidity period

(1) If a person is required by the terms of an offer of ESS interests in a body corporate that is not included in the official list of a financial market covered by section 1100K to hold application money received from ESS participants in trust until the start of a liquidity period, the person must hold the application money in trust under this section until:
   (a) the start of the liquidity period; or
   (b) the money is returned to the ESS participants.

(2) If the application money needs to be returned to an ESS participant, the person must return the money as soon as practicable.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

1100ZG Revocation of regulatory relief in certain circumstances

Revocation of regulatory relief—general case

(1) Section 1100ZC does not apply, and is taken never to have applied, to an offer for the issue, sale or transfer of ESS interests in connection with an employee share scheme of a body corporate or registered scheme if:
   (a) at the time the offer was made, it was eligible to be made under this Division because of the operation of section 1100Q (offers for monetary consideration); and
   (b) at any time after the offer is made, an ESS participant makes a payment to acquire ESS interests under the offer, or makes a payment to exercise options or incentive rights that were acquired under the offer; and

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(c) at any time after the offer is made, any of the following occur:

(i) for an offer under which an ESS interest of the body corporate or registered scheme may be issued or transferred by the trustee of a trust—the trust ceases to meet the requirements in section 1100S or the trustee of the trust does not comply with a term of the trust deed;

(ii) the offer results in a breach of the issue cap (see section 1100V);

(iii) the offer results in a breach of the monetary cap (if applicable) for a primary participant (see section 1100ZA);

(iv) any plan under which an ESS participant may acquire the ESS interests by making regular payments, or having regular deductions made from the participant's salary or wages, ceases to be an ESS contribution plan for the offer (see section 1100T);

(v) any loan offered by the body corporate or relevant responsible entity, or an associated entity of the body corporate or responsible entity, in connection with the scheme ceases to comply with section 1100U;

(vi) the person who makes the offer contravenes a term of the offer mentioned in section 1100Y (terms of the offer—disclosure).

Note: The terms of an offer for the issue or sale of ESS interests for monetary consideration (or a summary of those terms) must be set out in the offer document for the offer: see section 1100W.

Revocation of regulatory relief—no monetary consideration offers using trusts

(2) Section 1100ZC does not apply, and is taken never to have applied, to an offer for the issue, sale or transfer of ESS interests in connection with an employee share scheme of a body corporate or registered scheme if:

(a) at the time the offer was made, it was eligible to be made under this Division because of the operation of section 1100P (offers for no monetary consideration); and

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(b) under the offer, an ESS interest of the body corporate or registered scheme may be issued or transferred by the trustee of a trust; and

(c) at any time after the offer is made, an ESS participant acquires ESS interests under the offer; and

(d) at any time after the offer is made, the trust ceases to meet the requirements in section 1100S or the trustee of the trust does not comply with a term of the trust deed.

Revocation of regulatory relief—small scale offers using trusts, contribution plans or loans

(3) Section 1100ZC does not apply, and is taken never to have applied, to an offer for the issue, sale or transfer of ESS interests in connection with an employee share scheme of a body corporate or registered scheme if:

(a) at the time the offer was made, it was eligible to be made under this Division because of the operation of subsection 1100R(2) (small scale offers); and

(b) at any time after the offer is made, an ESS participant makes a payment to acquire ESS interests under the offer, or makes a payment to exercise options or incentive rights that were acquired under the offer; and

(c) at any time after the offer is made, any of the following occur:

(i) for an offer under which an ESS interest of the body corporate or registered scheme may be issued or transferred by the trustee of a trust—the trust ceases to meet the requirements in section 1100S or the trustee of the trust does not comply with a term of the trust deed;

(ii) any plan under which an ESS participant may acquire the ESS interests by making regular payments, or having regular deductions made from the participant's salary or wages, ceases to be an ESS contribution plan for the offer (see section 1100T);

(iii) any loan offered by the body corporate or relevant responsible entity, or an associated entity of the body corporate or responsible entity, in connection with the scheme ceases to comply with section 1100U.

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When contravention occurs

(4) Subsection (5) applies if subsection (1), (2) or (3) operates to treat section 1100ZC as never having applied to an offer of ESS interests because of an event (a ***revocation event***) occurring as described in any of the following provisions of this section:
  (a) subparagraphs (1)(c)(i) to (vi);
  (b) paragraph (2)(d);
  (c) subparagraphs (3)(c)(i) to (iii).

(5) For the purposes of determining:
  (a) under section 1316 when proceedings for an offence against this Act may be instituted; and
  (b) under section 1317K when proceedings for a declaration of a contravention of a provision of this Act may be started;

the act or omission alleged to constitute the offence or the contravention (as the case requires) is taken to have occurred when the revocation event occurs.

Subdivision E—Prohibitions and defences

1100ZH Misstatement in, or omission from, disclosure information

(1) A person must not make an offer that is expressed to be made under this Division, or distribute an application form for such an offer, to ESS participants if paragraph 1100Q(1)(a) applies to the offer and there is:
  (a) a misleading or deceptive statement in:
    (i) a document that purports to be an ESS offer document required by section 1100W for the offer; or
    (ii) information that purports to be supporting information required under section 1100X for the offer; or
  (b) an omission of information from a document mentioned in subparagraph (a)(i) or (ii) that would result in the document or information being misleading or deceptive; or
  (c) a new circumstance that:
    (i) has arisen during the application period for the offer mentioned in paragraph 1100W(2)(e); and

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(ii) if the new circumstance had occurred before the offer was made, would have been required to be included in any of the documents mentioned in paragraph (a).

(2) For the purposes of subsection (1), a person is taken to offer ESS interests to ESS participants at all times during which the participants may accept the offer.

Forecasts and other forward-looking statements

(3) A person is taken to make a misleading statement about a future matter (including the doing of, or refusing to do, an act) if they do not have reasonable grounds for making the statement. This subsection does not limit the meaning of a reference to a misleading statement or a statement that is misleading in a material particular.

Offence if statement or new circumstance is materially adverse

(4) A person commits an offence if:
   (a) the person contravenes subsection (1); and
   (b) the misleading or deceptive statement or omission, or the new circumstance, is materially adverse from the point of view of an ESS participant.

Defence—due diligence

(5) A person does not commit an offence against subsection (4) because of a misleading or deceptive statement in, or an omission from, a document mentioned in paragraph (1)(a) if the person proves that the person:
   (a) made all inquiries (if any) that were reasonable in the circumstances; and
   (b) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive.

Defence—lack of knowledge

(6) A person does not commit an offence against subsection (4) because of a misleading or deceptive statement in a document mentioned in paragraph (1)(a) if the person proves that the person did not know that the statement was misleading or deceptive.

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(7) A person does not commit an offence against subsection (4) because of an omission from a document mentioned in paragraph (1)(a) in relation to a particular matter if the person proves that the person did not know that there was an omission from the document in relation to that matter.

(8) A person does not commit an offence against subsection (4) because of a new circumstance that had arisen as mentioned in paragraph (1)(c) if the person did not know that the new circumstance had arisen.

Defence—reasonable reliance on information given by someone else

(9) A person does not commit an offence against subsection (4) because of a misleading or deceptive statement in a document mentioned in paragraph (1)(a) if the person proves that the person placed reasonable reliance on information given to them by:

(a) if the person is a body corporate or a responsible entity of a registered scheme—someone other than a director, employee or agent of the body corporate or responsible entity; or

(b) if the person is an individual—someone other than an employee or agent of the individual.

(10) For the purposes of subsection (9), a person is not the agent of a body corporate or responsible entity merely because the person performs a particular professional or advisory function for the body corporate or responsible entity.

Defence—provision of updated information

(11) A person does not commit an offence against subsection (4) because of a new circumstance that has arisen as mentioned in paragraph (1)(c) if the person proves that, as soon as reasonably practicable after the circumstance arose:

(a) the documents mentioned in paragraph (1)(a) were updated to include all relevant information about the new circumstance; and

(b) copies of those updated documents were given to the ESS participants.

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1100ZI Misstatement in, or omission from, financial information for options and incentive rights

(1) A person must not offer ESS interests that are options or incentive rights to ESS participants if subparagraph 1100Q(1)(a)(ii) and subsection 1100Y(4) apply to the offer and there is:

(a) a misleading or deceptive statement in any information provided to the ESS participants in purported satisfaction of the term of the offer mentioned in paragraph 1100Y(4)(a) (about the provision of valuations and financial information); or

(b) an omission from information provided as mentioned in paragraph (a) that would result in the information provided being misleading or deceptive; or

(c) a new circumstance that:

(i) has arisen during the period that the option is exercisable or the incentive right is vested; and

(ii) if the new circumstance had occurred before the option became exercisable or the incentive right vested, would have been required to be included in the information mentioned in paragraph (a).

(2) For the purposes of subsection (1), a person is taken to offer options and incentive rights to ESS participants at all times during which the options are exercisable or the incentive rights are vested.

Forecasts and other forward-looking statements

(3) A person is taken to make a misleading statement about a future matter (including the doing of, or refusing to do, an act) if they do not have reasonable grounds for making the statement. This subsection does not limit the meaning of a reference to a misleading statement or a statement that is misleading in a material particular.

Offence if statement or new circumstance is materially adverse

(4) A person commits an offence if:

(a) the person contravenes subsection (1); and

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(b) the misleading or deceptive statement or omission, or the new circumstance, is materially adverse from the point of view of an ESS participant.

Defence—due diligence

(5) A person does not commit an offence against subsection (4) because of a misleading or deceptive statement in, or an omission from, information mentioned in paragraph (1)(a) if the person proves that the person:

(a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive.

Defence—lack of knowledge

(6) A person does not commit an offence against subsection (4) because of a misleading or deceptive statement in information mentioned in paragraph (1)(a) if the person proves that the person did not know that the statement was misleading or deceptive.

(7) A person does not commit an offence against subsection (4) because of an omission from information mentioned in paragraph (1)(a) in relation to a particular matter if the person proves that the person did not know that there was an omission from the information in relation to that matter.

(8) A person does not commit an offence against subsection (4) because of a new circumstance that had arisen as mentioned in paragraph (1)(c) if the person did not know that the new circumstance had arisen.

Defence—reasonable reliance on information given by someone else

(9) A person does not commit an offence against subsection (4) because of a misleading or deceptive statement in information mentioned in paragraph (1)(a) if the person proves that the person placed reasonable reliance on information given to them by:

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(a) if the person is a body corporate or a responsible entity of a registered scheme—someone other than a director, employee or agent of the body corporate or responsible entity; or

(b) if the person is an individual—someone other than an employee or agent of the individual.

(10) For the purposes of subsection (9), a person is not the agent of a body corporate or responsible entity merely because the person performs a particular professional or advisory function for the body corporate or responsible entity.

Defence—provision of updated information

(11) A person does not commit an offence against subsection (4) because of a new circumstance that has arisen as mentioned in paragraph (1)(c) if the person proves that, as soon as reasonably practicable after the circumstance arose:

(a) the information mentioned in paragraph (1)(a) was updated to include all relevant information about the new circumstance; and

(b) the updated information was given to the ESS participants.

1100ZJ Obligation to inform person about deficiencies in disclosure documents

(1) This section applies to offers of ESS interests that are expressed to be made under this Division, if:

(a) paragraph 1100Q(1)(a) applies to the offer; and

(b) the offer is made in, or accompanied by, a document that purports to be an ESS offer document required by section 1100W for the offer.

(2) A person covered by subsection (3) must notify, in writing, the body corporate or responsible entity of a registered scheme making the offer as soon as practicable if, during the application period for the offer mentioned in paragraph 1100W(2)(e), the person becomes aware that:

(a) a material statement in any of the following documents is misleading or deceptive:

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(i) a document that purports to be an ESS offer document required by section 1100W for the offer;

(ii) information that purports to be supporting information required under section 1100X for the offer; or

(b) there is a material omission of information from any of the documents mentioned in paragraph (a) that would result in any of those documents being misleading or deceptive; or

(c) a material new circumstance exists that:

(i) has arisen during the application period for the offer mentioned in paragraph 1100W(2)(e); and

(ii) if the new circumstance had occurred before the offer was made, would have been required to be included in any of the documents mentioned in paragraph (a).

(3) The following persons are covered by this subsection:

(a) each director of the body corporate or responsible entity;

(b) a person named, with the person's consent, in any document mentioned in paragraph (2)(a) as a proposed director of the body corporate or responsible entity;

(c) a person named, with the person's consent, in any document mentioned in paragraph (2)(a) as having made a statement:

(i) that is included in any such document; or

(ii) on which a statement made in any such document is based.

(4) An offence based on subsection (2) is an offence of strict liability.

Defence—withdrawal of consent

(5) A person does not commit an offence against subsection (2) if:

(a) the person is named, with the person's consent, in any document mentioned in paragraph (2)(a):

(i) as a director or proposed director of the body corporate or responsible entity; or

(ii) as having made a statement that is included in any such document or on which a statement made in any such document is based; and

(b) at any time, the person publicly withdraws the person's consent to being named in the document in that way.

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Subdivision F—ASIC powers

1100ZK ASIC's power to make exemptions and declare modifications etc. in relation to this Division

Application

(1) This section applies in relation to Chapters 2L, 5, 5C, 6D and 7 (the ***covered Chapters***) and this Division.

Exemptions and declarations on application of this Division

(2) ASIC may do either or both of the following:
  (a) exempt a person from all or specified provisions of the covered Chapters or this Division;
  (b) declare that the covered Chapters or this Division apply in relation to a person, as if specified provisions were omitted, modified or varied as specified in the declaration.

(3) The exemption or declaration may do all or any of the following:
  (a) relate to all persons, specified persons or a specified class of persons;
  (b) relate to any other matter generally or as specified.

Imposition of conditions on exemption

(4) An exemption may apply unconditionally or subject to specified conditions.

(5) An entity to whom a condition specified in an exemption applies must comply with the condition.

(6) The Court may order the entity to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

Exemptions and declarations relating to all or a class of persons

(7) An exemption or declaration that relates to all persons, or a specified class of persons, must be made by legislative instrument.

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Exemptions and declarations relating to specified persons

(8) An exemption or declaration that relates to a specified person must be made by notifiable instrument.

(9) ASIC must give a copy of an exemption or declaration that relates to a specified person to the person as soon as is reasonably practicable after the exemption or declaration is made.

1100ZL ASIC stop orders

(1) This section applies if, in relation to an offer of ESS interests that is purportedly made under this Division, ASIC is satisfied that:

(a) information in any of the following is not worded and presented in a clear, concise and effective manner:

(i) an application form for the offer;

(ii) a document that purports to be an ESS offer document for the offer;

(iii) a document that purports to be supporting information required under section 1100X for the offer;

(iv) if the offer is not in a document mentioned in subparagraph (i) or (ii)—the document that contains the offer; or

(b) a document that purports to be an ESS offer document for the offer does not meet the requirements of subsection 1100W(2); or

(c) the terms of the offer do not comply with section 1100Y or 1100Z; or

(d) a document that purports to be supporting information required under section 1100X for the offer does not meet the relevant requirements under that section for that document; or

(e) the document that purports to be the ESS offer document, information that purports to be supporting information required under section 1100X, or the terms of the offer:

(i) include a misleading or deceptive statement; or

(ii) omit information in such a way that results in any of those documents being misleading or deceptive; or

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(f) a person has contravened, or is likely to contravene, a term of the offer covered by section 1100Y or 1100Z.

(2) ASIC may order that no offers, issues, sales or transfers of the ESS interests be made while the order is in force.

(3) Before making an order under subsection (2), ASIC must:
   (a) hold a hearing; and
   (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

(4) If ASIC considers that any delay in making an order under subsection (2) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order that no offers, issues, sales or transfers of the ESS interests be made while the interim order is in force. The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.

(5) At any time during the hearing, ASIC may make an interim order that no offers, issues, sales or transfers of the ESS interests be made while the interim order is in force. The interim order lasts until:
   (a) ASIC makes an order under subsection (2) after the conclusion of the hearing; or
   (b) the interim order is revoked;

   whichever happens first.

(6) An order under subsection (2), (4) or (5) must be in writing and must be served on the person who is ordered not to offer, issue, sell or transfer ESS interests.

1100ZM ASIC's power to request documents

(1) ASIC may require a person who makes, or purports to make, an offer of ESS interests to produce to ASIC such documents, or to give to ASIC such information, as ASIC thinks necessary in order to form an opinion about whether the provisions of this Division have been complied with.

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(2) The person must provide the information within such reasonable period, and in such form, as are specified by ASIC.

(3) An offence based on subsection (2) is an offence of strict liability.

34 Subparagraph 1274(2)(a)(iva)

Repeal the subparagraph, substitute:

(iva) an ESS offer document, an application form or any supporting information required under section 1100X lodged with ASIC in relation to an offer of ESS interests in a body corporate (the ***issuing body corporate***), if the conditions set out in subsection (2AA) are satisfied; or

35 Subsection 1274(2AA)

Repeal the subsection, substitute:

(2AA) For the purposes of subparagraph (2)(a)(iva), the conditions are the following:

(a) no equity interests in any of the following companies are listed for quotation in the official list of any approved stock exchange at the end of the issuing body corporate's most recent income year (the ***pre-lodgement year***) before the income year in which the relevant document mentioned in subparagraph (2)(a)(iva) is lodged with ASIC:

(i) the issuing body corporate;

(ii) any subsidiary of the issuing body corporate at the end of the pre-lodgement year;

(iii) any holding company of the issuing body corporate at the end of the pre-lodgement year;

(iv) any subsidiary of a holding company of the issuing body corporate at the end of the pre-lodgement year; and

(b) the issuing body corporate had an aggregated turnover not exceeding $50 million for the pre-lodgement year.

36 At the end of Chapter 10

Add:

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Part 10.66—Transitional provisions relating to Schedule 4 of the Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022

1696 Employee share schemes—recognised foreign markets

(1) If, immediately after the commencement of this section, there is no legislative instrument in force under subsection 1100K(2), then an approved foreign market, within the meaning of the *ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669*, is taken to be a foreign market determined by ASIC for the purposes of that section.

(2) This section ceases to apply when ASIC determines a foreign market under subsection 1100K(2).

37 In the appropriate position in Schedule 3

Insert:

Subsection 1100ZE(1)	60 penalty units
Subsection 1100ZE(2)	20 penalty units
Subsection 1100ZF(1)	60 penalty units
Subsection 1100ZF(2)	20 penalty units
Subsection 1100ZH(4)	5 years imprisonment
Subsection 1100ZI(4)	5 years imprisonment
Subsection 1100ZJ(2)	50 penalty units
Subsection 1100ZM(2)	60 penalty units

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Schedule 5—Varying the GDP uplift factor for tax instalments

Part 1—Amendments

Taxation Administration Act 1953

1 At the end of section 45-405 in Schedule 1

Add:

*Reduced **GDP adjustment** for 2022-23 income year*

(9) Despite subsections (3) and (6), if the current year is the 2022-23 income year, then for the purposes of the formula in subsection (2) the ***GDP adjustment*** is 2%.

Note: This subsection will be repealed on 1 July 2027: see Part 2 of Schedule 5 to the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*.

2 Application

The amendment made by this Part applies for the purposes of working out the amount of an instalment for an instalment quarter for the 2022-23 income year.

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Part 2—Sunsetting

Taxation Administration Act 1953

3 Subsection 45-405(9) in Schedule 1

Repeal the subsection.

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Schedule 6—Low and Middle Income tax offset

Income Tax Assessment Act 1997

1 Subsection 61-105(3) (note)

Repeal the note, substitute:

Note: This section will be repealed on 1 July 2022 by the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*.

2 Subsection 61-107(1) (note)

Repeal the note, substitute:

Note: This section will be repealed on 1 July 2022 by the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*.

3 After subsection 61-107(1)

Insert:

(1A) The amount of your *tax offset is increased by $420 if:

(a) the income year is the 2021-22 income year; and

(b) your relevant income is not $126,000.

4 Subsections 61-107(2) and (4)

Omit "Despite subsection (1)", substitute "Despite subsections (1) and (1A)".

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Schedule 7—Safety net thresholds

National Health Act 1953

1 Section 99F (definition of *concessional beneficiary safety net*)

Omit “48”, substitute “36”.

2 Section 99F (definition of *general patient safety net*)

Omit “$1,486.80”, substitute “$1,457.10”.

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Schedule 8—2022 cost of living payment

Income Tax Assessment Act 1997

1 Section 11-15 (table item headed "social security or like payments")

After:

Commonwealth education or training payment ..... Subdivision 52-F

insert:

cost of living payment 2022 under the *Social Security Act 1991* 52-10

cost of living payment 2022 under the *Veterans' Entitlements Act 1986*..... 52-65

2 After paragraph 52-10(1)(zb)

Insert:

; or (zc) 2022 cost of living payment under the *Social Security Act 1991*.

3 After subsection 52-10(1C)

Insert:

(1CA) 2022 cost of living payment under Division 1 of Part 2.6D of the *Social Security Act 1991* is exempt from income tax.

4 Section 52-40 (after table item 1A)

Insert:

1AA	2022 cost of living payment	Part 2.6D	Not applicable	Not applicable

5 After paragraph 52-65(1)(e)

Insert:

; or (f) a 2022 cost of living payment under the *Veterans' Entitlements Act 1986*.

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6 After subsection 52-65(1K)

Insert:

(1L) 2022 cost of living payment under Division 1 of Part IIIK of the *Veterans' Entitlements Act 1986* is exempt from income tax.

7 Section 52-75 (after table item 1A)

Insert:

1AA	2022 cost of living payment	Part IIIK	Not applicable

8 At the end of subsection 52-131(2)

Add:

; (e) a 2022 cost of living payment.

9 After paragraph 52-131(8)(ac)

Insert:

(ad) a 2022 cost of living payment; or

Social Security Act 1991

10 After paragraph 8(8)(yp)

Insert:

(yq) a 2022 cost of living payment under Division 1 of Part IIIK of the Veterans' Entitlements Act;

11 Before paragraph 23(4AA)(b)

Insert:

(af) Part 2.6D (2022 cost of living payment);

12 After Part 2.6C

Insert:

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Part 2.6D—2022 cost of living payment

Division 1—2022 cost of living payment

314 2022 cost of living payment

Qualification for payment

(1) A person is qualified for a 2022 cost of living payment if:
  (a) subsection 316(2), (3) or (4) applies to the person on 29 March 2022; and
  (b) the person is residing in Australia on 29 March 2022.

More than one entitlement

(2) A person may receive one payment only under this Division, regardless of how many times the person qualifies under this section.

(3) If:
  (a) a 2022 cost of living payment under the ABSTUDY Scheme; or
  (b) a 2022 cost of living payment under Division 1 of Part IIIK of the Veterans' Entitlements Act;

is paid to a person, no payment under this section can be paid to the person.

315 Amount of 2022 cost of living payment

The amount of a person's 2022 cost of living payment under this Division is $250.

Division 2—Eligibility

316 Eligibility

(1) This section applies for the purposes of subsection 314(1).

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Receipt of certain benefits

(2) This subsection applies to a person on a day if the person receives one of the following benefits in respect of that day:
  (a) age pension;
  (b) disability support pension;
  (c) carer payment;
  (d) parenting payment;
  (e) youth allowance;
  (f) austudy payment;
  (g) jobseeker payment;
  (h) special benefit;
  (i) carer allowance;
  (j) double orphan pension.

Note: References to youth allowance and jobseeker payment include references to farm household allowance: see section 93 of the *Farm Household Support Act 2014*.

Qualified for seniors health card

(3) This subsection applies to a person on a day if:
  (a) the person makes a claim for a seniors health card under Division 1 of Part 3 of the Administration Act on or before that day; and
  (b) the person does not withdraw that claim on or before that day; and
  (c) the person is qualified for the card on that day.

Qualified for pensioner concession card

(4) This subsection applies to a person on a day if the person is qualified for a pensioner concession card on that day.

13 Subsection 1222(2) (after table item 4L)

Insert:

4M	1223ABM (debts in respect of 2022 cost of living payment)	deductions	1231, 1234A
		legal proceedings	1232
		garnishee notice	1233
		repayment by instalments	1234

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14 After section 1223ABL

Insert:

1223ABM Debts in respect of 2022 cost of living payment

(1) If:

(a) a 2022 cost of living payment under Division 1 of Part 2.6D is paid to a person; and

(b) after the 2022 cost of living payment is paid to the person, an underlying determination in relation to the person, at least so far as it relates to:

(i) 29 March 2022; or

(ii) a period that includes 29 March 2022;

is or was (however described) changed, revoked, set aside, or superseded by another determination; and

(c) the decision to change, revoke, set aside or supersede the underlying determination is or was made for the reason, or for reasons including the reason, that the person knowingly made a false or misleading statement, or knowingly provided false information; and

(d) had the change, revocation, setting aside or superseding occurred on or before 29 March 2022, the 2022 cost of living payment would not have been paid;

the amount of the 2022 cost of living payment is a debt due to the Commonwealth by the person.

(2) For the purposes of this section, an ***underlying determination*** in relation to a person is a determination made under Part 3 of the Administration Act because of which a benefit mentioned in subsection 316(2) of this Act was payable to the person.

(3) If:

(a) a 2022 cost of living payment under Division 1 of Part 2.6D is paid to a person; and

(b) the person qualified for the payment because of subsection 316(3) applying to the person in relation to having made a claim for a seniors health card; and

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(c) the person knowingly made a false or misleading statement, or knowingly provided false information, in relation to the claim; and

(d) the 2022 cost of living payment would not have been paid to the person but for that statement or information;

the amount of the 2022 cost of living payment is a debt due to the Commonwealth by the person.

(4) Apart from section 1224AA, the other provisions of this Part under which debts arise do not apply in relation to a 2022 cost of living payment under Division 1 of Part 2.6D.

Social Security (Administration) Act 1999

15 Before section 12B

Insert:

12AH 2022 cost of living payment

A claim is not required for a 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act.

16 Subsection 47(1) (after paragraph (gj) of the definition of *lump sum benefit*)

Insert:

(gk) 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act; or

17 After section 47AH

Insert:

47AI Payment of 2022 cost of living payment

(1) If a person is qualified for a 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act, the Secretary must, subject to subsection (2), pay the payment to the person in a single lump sum:

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(a) on the date, occurring on or after 29 March 2022, that the Secretary considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and
(b) in such manner as the Secretary considers appropriate.

(2) The Secretary must not pay the payment on or after 1 July 2023.

18 Section 123TC

Insert:

2022 cost of living payment means:
(a) a 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act; or
(b) a 2022 cost of living payment under the ABSTUDY Scheme.

19 Subdivision DB of Division 5 of Part 3B (heading)

Omit "**and household stimulus payments**", substitute "**, household stimulus payments and cost of living payments**".

20 At the end of Subdivision DB of Division 5 of Part 3B

Add:

123XPE Deductions from 2022 cost of living payment

Scope

(1) This section applies if:
(a) a person is subject to the income management regime; and
(b) a 2022 cost of living payment is payable to the person.

Deductions from 2022 cost of living payment

(2) The following provisions have effect:
(a) the Secretary must deduct from the 2022 cost of living payment the deductible portion of the payment;
(b) an amount equal to the deductible portion of the payment is credited to the Income Management Record;
(c) an amount equal to the deductible portion of the payment is credited to the person's income management account.

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(3) For the purposes of subsection (2), the ***deductible portion*** of a 2022 cost of living payment is 100% of the amount of the payment.

21 Subsection 124PD(1) (after subparagraph (a)(viik) of the definition of *restrictable payment*)

Insert:

(viil) a 2022 cost of living payment under Division 1 of Part 2.6D of the 1991 Act; or

(viim) a 2022 cost of living payment under the ABSTUDY Scheme; or

Veterans' Entitlements Act 1986

22 After paragraph 5H(8)(zzao)

Insert:

(zzap) a 2022 cost of living payment under Division 1 of Part IIIK;

23 After Part IIIJ

Insert:

Part IIIK—2022 cost of living payment

Division 1—2022 cost of living payment

67ZP 2022 cost of living payment

(1) A person is eligible for a 2022 cost of living payment if Division 2 applies to the person on 29 March 2022.

(2) The amount of a person's 2022 cost of living payment under this Division is $250.

67ZQ More than one entitlement

(1) A person may receive one payment only under this Division, regardless of how many times the person becomes eligible under section 67ZP.

(2) If:

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(a) a 2022 cost of living payment under the ABSTUDY Scheme; or

(b) a 2022 cost of living payment under Division 1 of Part 2.6D of the Social Security Act;

is paid to a person, no payment under this Division can be paid to the person.

67ZR Claim not required for 2022 cost of living payment

A claim is not required for a 2022 cost of living payment under this Division.

67ZS Payment of 2022 cost of living payment

(1) If a person is eligible for a 2022 cost of living payment under this Division, the Commission must, subject to subsection (2), pay the payment to the person in a single lump sum:

(a) on the date, occurring on or after 29 March 2022, that the Commission considers to be the earliest date on which it is reasonably practicable for the payment to be paid; and

(b) in such manner as the Commission considers appropriate.

(2) The Commission must not pay the payment on or after 1 July 2023.

Division 2—Eligibility

67ZT Purpose of this Division

This Division applies for the purposes of subsection 67ZP(1).

Note: Sections 67ZU to 67ZZ are subject to section 67ZZA (residence requirement).

67ZU Payments under this Act

Service pension or income support supplement

(1) This Division applies to a person on a day if service pension or income support supplement is payable to the person on that day.

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(2) For the purposes of subsection (1), and without limiting that subsection, service pension or income support supplement is taken to be payable to a person on a day (the ***test day***) if:

(a) service pension or income support supplement ceases to be payable to the person on a day (the ***cessation day***) occurring on or before the test day; and

(b) that cessation occurs because of employment income the person or the person's partner earns, derives or receives (either alone or in combination with any other ordinary income earned, derived or received by the person or the person's partner); and

(c) were it not for the employment income, or the combined income, referred to in paragraph (b), the pension or supplement would be payable to the person throughout the period:

(i) starting on the cessation day; and

(ii) ending on the test day; and

(d) the cessation day occurs no earlier than 12 weeks before the test day.

Pensions by way of compensation under Part II or IV

(3) This Division applies to a person on a day if:

(a) the person receives for that day a pension under Part II or IV at a rate determined under or by reference to section 22, 23, 24, 25 or 27; and

(b) the person's rate of the pension is greater than nil for that day.

(4) This Division applies to a person on a day if:

(a) the person receives for that day a pension under Part II or IV at a rate determined under or by reference to subsection 30(1); and

(b) the person's rate of the pension is greater than nil for that day.

(5) For the purposes of subsections (3) and (4), a person is taken to receive a pension under Part II or IV at a rate greater than nil even if the person's rate would be nil, or pension would not be payable,

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merely because the rate is reduced, or pension is not payable, under Division 4, 5 or 5A of Part II or section 74.

Veteran payment

(6) This Division applies to a person on a day if:
  (a) veteran payment is payable to the person on that day; and
  (b) veteran payment is so payable because of a claim made on or before that day.

67ZV Veterans' Children Education Scheme

This Division applies to a person on a day if:
  (a) a payment under the Veterans' Children Education Scheme is payable to the person on that day; and
  (b) the payment is so payable because of a claim the person makes on or before that day; and
  (c) the person turns 16 on or before that day.

67ZW Seniors health card, gold card etc.

Seniors health card

(1) This Division applies to a person on a day if:
  (a) the person makes a claim for a seniors health card under Division 2 of Part VIIC on or before that day; and
  (b) the person does not withdraw that claim on or before that day; and
  (c) the person is eligible for the card on that day.

(2) This Division applies to a person on a day if:
  (a) the person is the holder of a seniors health card on that day because of subsection 118XA(3); and
  (b) the person is eligible for the card on that day.

Gold card

(3) This Division applies to a person on a day if:
  (a) the person is, on that day, the holder of a card, known as the Repatriation Health Card—For All Conditions, that

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evidences the person's eligibility under this Act or the MRCA to be provided with treatment for all injuries or diseases; and

(b) the person is eligible for the card on that day.

(4) This Division applies to a person on a day if:

(a) the person makes a claim, on or before that day, under:

(i) section 8 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*; or

(ii) section 9 of the *Treatment Benefits (Special Access) Act 2019*;

for a determination that the person is an eligible person; and

(b) the person does not withdraw that claim on or before that day; and

(c) the person is an eligible person (within the meaning of that Act) on that day.

Fringe benefits

(5) This Division applies to a person on a day if the person is eligible for fringe benefits under subsection 53A(1A) of this Act on that day.

67ZX MRCA

Compensation for permanent impairment

(1) This Division applies to a person on a day if either or both of the following apply:

(a) weekly compensation under Part 2 of Chapter 4 of the MRCA:

(i) is payable to the person for that day; or

(ii) would be payable to the person for that day apart from paragraph 398(3)(b) of the MRCA and offsetting described in subsection 13(4) of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*;

(b) the person receives lump sum compensation under Part 2 of Chapter 4 of the MRCA on or before that day.

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Special Rate Disability Pension

(2) This Division applies to a person on a day if Special Rate Disability Pension under the MRCA:
  (a) is payable to the person for that day; or
  (b) would be payable to the person for that day apart from section 204, and paragraph 398(3)(b), of the MRCA.

Compensation for wholly dependent partners

(3) This Division applies to a person on a day if either or both of the following apply:
  (a) weekly compensation under Division 2 of Part 2 of Chapter 5 of the MRCA either:
    (i) is payable to the person for that day; or
    (ii) would be payable to the person for that day apart from paragraph 398(3)(b) of the MRCA;
  (b) both:
    (i) the person receives lump sum compensation under Division 2 of Part 2 of Chapter 5 of the MRCA on or before that day; and
    (ii) subsection 388(6) of the MRCA does not apply to the person before that day.

67ZY Education scheme under MRCA

This Division applies to a person on a day if:
  (a) a payment under the scheme determined under section 258 of the MRCA is payable to the person on that day; and
  (b) the payment is so payable because of a claim the person makes on or before that day; and
  (c) the person turns 16 on or before that day.

67ZZ *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*

This Division applies to a person on a day if:

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(a) at any time, the person receives a payment of compensation under section 24 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*; and

(b) the payment is paid because of a claim the person makes on or before that day.

67ZZA Residence requirement

Despite sections 67ZU to 67ZZ, this Division does not apply to a person on a day if the person does not reside in Australia on that day.

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Schedule 9—Fuel duty consequential amendments

Product Stewardship (Oil) Regulations 2000

1 Paragraph 4(1)(b)

Omit "mentioned in", substitute "covered by".

2 Subregulation 4(1) (cell at table item 8, column headed "Amount (cents/l)")

Repeal the cell, substitute:

the amount worked out under subregulation (1A)

3 After subregulation 4(1)

Insert:

(1A) For the purposes of column 3 of item 8 in the table in subregulation (1), the amount is:

(a) in relation to the consumption of gazetted oil for a gazetted use during the period beginning on 30 March 2022 and ending at the end of 28 September 2022—4.3 cents per litre; or

(b) in relation to the consumption of gazetted oil for a gazetted use during any other period—8.5 cents per litre.

[*Minister's second reading speech made in—*
House of Representatives on 30 March 2022
Senate on 30 March 2022]

(46/22)

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