2022–2023–2024

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

TREASURY LAWS AMENDMENT (DELIVERING BETTER FINANCIAL OUTCOMES AND OTHER MEASURES) BILL 2024

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Treasurer and Minister for Financial Services, the Hon Stephen Jones MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

Table of Contents

Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	***Definition***
ADB	Asian Development Bank
ADB Act	*Asian Development Bank Act 1966*
ADB Agreement	The Agreement establishing the Asian Development Bank
ADI	Authorised deposit-taking institution
AFS licensee	Australian financial services licensee
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investment Commission
ATO	Australian Taxation Office
Australian Government Guide to Commonwealth Offences	A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (Attorney-General's Department, Sept 2011)
Bill	Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024
CAF Review	Independent Review of Multilateral Development Banks' Capital Adequacy Frameworks
CDEP Scheme	Community Development Employment Projects Scheme
Commissioner	Commissioner of Taxation
Corporations Act	*Corporations Act 2001*
Corporations Regulations	*Corporations Regulations 2001*

Abbreviation	***Definition***
EBRD	European Bank for Reconstruction and Development
EBRD Act	*European Bank for Reconstruction and Development Act 1990*
EBRD Agreement	The Agreement establishing the European Bank for Reconstruction and Development
FSG	Financial Services Guide
GAAR	general anti-avoidance rules
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
IBRD	International Bank for Reconstruction and Development
IBRD Agreement	The Articles of Agreement of the International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
IMA Act 1947	*International Monetary Agreements Act 1947*
IMF	International Monetary Fund
IMF Agreement	The Articles of Agreement of the International Monetary Fund
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
LNG	liquid natural gas
MDB	Multilateral Development Bank
MQPR	Mining, quarrying or prospecting right

Abbreviation	***Definition***
OECD	Organisation for Economic Co-operation and Development
PRRT	Petroleum Resource Rent Tax
PRRTA Act	*Petroleum Resource Rent Tax Assessment Act 1987*
PRRTA Regulations	*Petroleum Resource Rent Tax Assessment Regulation 2015*
Review	Quality of Advice Review (Dec 2022)
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SIS Regulations	*Superannuation Industry (Supervision) Regulations 1994*
TAA 1953	*Tax Administration Act 1953*

General outline and financial impact

Schedule 1 - Delivering better financial outcomes – reducing red tape

Outline

Schedule 1 to the Bill delivers tranche 1 of the Government's Delivering Better Financial Outcomes package, including the initial response to the Quality of Advice review. Tranche 1 includes amendments that will provide legal certainty for the payment of financial adviser fees from a member's superannuation fund account and remove red tape that currently adds to the cost of financial advice with no benefit to consumers.

This measure will support increased access to affordable financial advice for millions of Australians and will particularly benefit the five million Australians at or approaching and planning for their retirement that need assistance navigating the pension and superannuation systems.

Date of effect

Division 1 of Part 1 of Schedule 1 to the Bill commences the day after Royal Assent. The amendments apply to costs charged on or after six months after commencement.

Division 2 of Part 1 of Schedule 1 to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent. The amendments apply to the 2019-20 income year onwards.

Part 2 of Schedule 1 to the Bill commences the day after Royal Assent. The amendments apply to any new arrangements entered into on and after six months after commencement, and any existing arrangements on and after the anniversary day of those arrangements.

Part 3 of Schedule 1 to the Bill commence the day after Royal Assent.

Part 4 of Schedule 1 to the Bill commences immediately after the commencement of Parts 2 and 3 of this Schedule. The amendments in relation to the repeal of section 963D of the Corporations Act (relating to ADI employee benefits) apply to any arrangement entered into, or varied, on or after six months after commencement, or to any benefits given (other than as part of an arrangement) on or after six months after commencement. The amendments in the rest of Part 4 apply to benefits given on or after commencement.

Part 5 of Schedule 1 to the Bill commences 12 months after Royal Assent. The amendments apply to benefits given on or after 12 months after commencement.

Proposal announced

Schedule 1 to the Bill implements the first tranche of the Government's response to the Quality of Advice review announced on 13 June 2023.

Financial impact

Schedule 1 to the Bill is estimated to result in an unquantifiable decrease in the Underlying Cash Balance.

All figures in this table represent amounts in $m.

2022-23	2023-24	2024-25	2025-26	2026-27
0	*	*	*	*

*****Indicates an unquantifiable impact

Human rights implications

Schedule 1 to the Bill is compatible with human rights. See Statement of Compatibility with Human Rights — Chapter 7.

Compliance cost impact

While the majority of measures in this package will reduce ongoing compliance costs for the financial services industry by streamlining, clarifying and adding flexibility to existing requirements, there are likely to be some short-term compliance costs associated with transitioning existing systems and processes.

Schedule 2 - Petroleum resource rent tax anti-avoidance rules

Outline

Schedule 2 to the Bill amends the general anti-avoidance provisions in the PRRTA Act so that they align with the more robust drafting approach of the general anti-avoidance provisions in Part IVA of the ITAA 1936.

Date of effect

Schedule 2 to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.

The amendments apply to any arrangement that was entered into on or after 1 July 2023.

Proposal announced

Schedule 2 to the Bill partially implements the Petroleum Resource Rent Tax – Government Response to the Review of the PRRT Gas Transfer Pricing arrangements measure announced in the 2023-24 Budget.

Financial impact

Schedule 2 to the Bill is estimated to have a small but unquantifiable impact on receipts over the 5 years from 2022-23.

All figures in this table represent amounts in $m.

2022 – 2023	**2023 – 2024**	**2024 – 2025**	**2025 – 2026**	**2026 – 2027**
-	*	*	*	*

-Indicates it is not applicable to the 2022-23 fiscal year.

*Indicates an unquantifiable impact.

Human rights implications

Schedule 2 to the Bill does not raise any human rights issues. See Statement of Compatibility with Human Rights — Chapter 7.

Compliance cost impact

The compliance cost for this measure has been measured as nil.

Schedule 3 - Capital allowances for mining, quarrying or prospecting rights and clarifying the meaning of exploration for petroleum

Outline

Schedule 3 to the Bill amends the PRRTA Act to clarify the meaning of the phrase 'exploration for petroleum'.

Additionally, amendments to the ITAA 1997 clarify:

- that MQPRs cannot be depreciated for income tax purposes until they are used, not merely held; and
- the circumstances in which the issue of new rights over areas covered by existing rights lead to income tax adjustments.

Date of effect

Schedule 3 to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.

The amendments in relation to the meaning of 'exploration for petroleum' in the PRRTA Act apply to all expenditure incurred from 21 August 2013.

The amendments in relation to the capital allowance provisions in the ITAA 1997 dealing with MQPRs apply in respect of an MQPR that an entity started to hold after the date of announcement (7:30PM (AEST) on 9 May 2023 (Budget night)).

Proposal announced

Schedule 3 to the Bill implements the "Clarifying the tax treatment of 'exploration' and 'mining, quarrying and prospecting rights'" measure in the 2023-2024 Budget.

Financial impact

Schedule 3 to the Bill is estimated to have an unquantifiable impact on receipts over the 5 years from 2022-23.

All figures in this table represent amounts in $m.

2022-23	2023-24	2024-25	2025-26	2026-27
-	*	*	*	*

-Indicates it is not applicable to the 2022-23 fiscal year.

*Indicates an unquantifiable impact.

Human rights implications

Schedule 3 does not raise human rights issues. See Statement of Compatibility with Human Rights — Chapter 7.

Compliance cost impact

The compliance cost for this measure has been measured as minimal.

Schedule 4 - Multilateral development banks

Outline

Schedule 4 to the Bill amends the ADB Act, EBRD Act and IMA Act 1947 to streamline the process under which amendments to the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement are incorporated into domestic legislation. Consistent with modern drafting practice, the amendments incorporate the agreements into legislation by reference. This will ensure any future amendments to the agreements are automatically incorporated, including amendments currently being progressed to the EBRD Agreement and IBRD Agreement.

Date of effect

Schedule 4 to the Bill commences the day after Royal Assent.

Financial impact

Schedule 4 to the Bill is estimated to have nil or minimal financial impact.

Human rights implications

Schedule 4 to the Bill does not raise any human rights issues. See Statement of Compatibility with Human Rights — Chapter 7.

Compliance cost impact

Nil.

Schedule 5 - Miscellaneous and technical amendments

Outline

Schedule 5 to the Bill makes a number of miscellaneous and technical amendments to Treasury portfolio legislation. The amendments demonstrate the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.

The amendments repeal inoperative provisions, simplify provisions and reduce red tape.

Date of effect

Part 1 of Schedule 5 to the Bill commences the day after Royal Assent.

Part 2 of Schedule 5 to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.

Part 3 of Schedule 5 to the Bill commences on a day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day the Bill receives Royal Assent, they commence on the day after the end of that period.

Financial impact

Schedule 5 to the Bill is expected to have no more than a small but unquantifiable impact.

Human rights implications

Schedule 5 to the Bill does not raise any human rights issues. See Statement of Compatibility with Human Rights — Chapter 7.

Compliance cost impact

This measure is estimated to have minor impact on compliance costs.

Schedule 6 - Location offset and producer tax offset for films

Outline

Schedule 6 to the Bill amends the ITAA 1997 to make changes to the location tax offset and producer tax offset to:

- increase the rate of the location tax offset from 16.5 to 30 per cent of a company's total qualifying Australian production expenditure on a film;
- increase a company's minimum qualifying Australian production expenditure on a film from $15 million to $20 million:
- increase the minimum amount of total qualifying Australian production expenditure on films per hour from $1 million to $1.5 million;
- include a minimum training expenditure requirement test which a company can be exempt from provided that certain conditions are met in relation to the establishment or upgrading of certain permanent Australian film infrastructure. Alternatively, a company could be exempt from the minimum training expenditure requirement if certain training program requirements for individuals working on the film are satisfied.
- include conditions to require some post, digital and visual effects for productions to be provided by Australian providers or through an Australian permanent establishment;
- enable the Arts Minister to request specific information in relation to the location tax offset; and
- add a new threshold category to the producer tax offset for productions spending a minimum of $35 million of qualifying Australian production expenditure for a season of a drama series.

Date of effect

The location tax offset amendments in Schedule 6 apply generally from 1 July 2023. The amendments that provide for minimum training requirements or film infrastructure investment apply from 1 July 2024. The amendments that apply to information notices enable a notice to be given on or after commencement of Schedule 6 to the Bill. The amendments that provide for a new threshold category to the producer tax offset apply from 1 July 2024.

Proposal announced

The amendments to the location tax offset in Schedule 6 to the Bill partially implement the measure *Revive – National Cultural Policy and Location Incentive* measure from the 2023-24 Budget.

The amendments to the producer tax offset in Schedule 6 to the Bill partially implements the measure from the 2023-24 Mid-Year Economic and Fiscal Outlook.

Financial impact

The location tax offset amendments are estimated to increase payments by $112.2 million over the 4 years from 2024-25 comprising:

2023 – 24	**2024 – 25**	**2025 – 26**	**2026 – 27**	**2027 – 28**
-	-$4.5	$36.5	$24.9	$55.3

The producer tax offset amendments are estimated to increase payments by $20 million over 2 years from 2025-26 (and $10 million per year ongoing).

2023 – 24	**2024 – 25**	**2025 – 26**	**2026 – 27**	**2027 – 28**
-	-	-	$10.0	$10.0

All figures in the tables represent amounts in $ million.

Human rights implications

Schedule 6 to the Bill is compatible with human rights. See Statement of Compatibility with Human Rights — Chapter 7.

Compliance cost impact

Minor.

Chapter 1: Delivering better financial outcomes – reducing red tape

Table of Contents:

Outline of chapter

1.1 Schedule 1 makes various amendments to the Corporations Act, the SIS Act and other Acts to increase accessibility and affordability of personal financial advice. It implements the Government's response to the following recommendations of the Quality of Advice Review:

- recommendation 7: clarifying the legal basis in the SIS Act for superannuation trustees to charge individual members for financial advice from their superannuation account, and clarify associated tax consequences under the ITAA 1997 (Part 1 of Schedule 1);
- recommendation 8: streamlining ongoing fee renewal and consent requirements, including removing the requirement to provide a fee disclosure statement, in the Corporations Act (Part 2 of Schedule 1);
- recommendation 10: providing more flexibility on how FSG requirements can be met under the Corporations Act (Part 3 of Schedule 1);

- simplifying and clarifying the provisions governing conflicted remuneration in the Corporations Act (Part 4 of Schedule 1), including:
  - recommendations 13.1 and 13.3: clarifying that monetary or non-monetary benefits given by a client are not conflicted remuneration along with the removal of consequential exceptions;
  - recommendation 13.2: introducing a specific exception to the conflicted remuneration provisions that permits a superannuation fund trustee to pay a fee for personal advice where the member requests the trustee to pay the fee from their superannuation account;
  - recommendation 13.4: removing the exception to conflicted remuneration rules for the issue of financial products where advice has not been provided in the previous 12 months;
  - recommendation 13.5: removing the exception to conflicted remuneration rules for agents or employees of Australian ADIs; and
- recommendations 13.7 to 13.9: introducing new standardised consent requirements for life risk insurance, general insurance and consumer credit insurance commissions (Part 5 of Schedule 1).

1.2 These reforms are part of the Government's Delivering Better Financial Outcomes reform package as announced in the Assistant Treasurer's press release *Delivering better financial outcomes - roadmap for financial advice reform* of 13 June 2023.

Context of amendments

1.3 The 2019 *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* recommended that a review be undertaken of measures which have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice.

1.4 The Review considered how regulatory settings could better enable the provision of high quality, accessible and affordable financial advice to retail clients. The Review's final report was provided to the Government on 16 December 2022 and made 22 specific recommendations.

1.5 This Bill implements 11 recommendations, delivering the first tranche of the Government's Delivering Better Financial Outcomes package of reforms. The Bill includes amendments that will improve the process of providing financial advice by providing legal certainty for the payment of adviser fees from a member's superannuation fund account, removing onerous red tape that adds

to the cost of advice with no consumer benefit, and improving consent requirements for certain insurance commissions.

1.6 Consultation has been ongoing on the other recommendations, including the recommendations the Government has agreed in-principle. On 7 December 2023, the Government finalised its response to the Review, adopting a further five recommendations in full or in principle. Legislation to implement this announcement will be developed in the next tranche of the Delivering Better Financial Outcomes package.

Summary of new law

1.7 Schedule 1 amends the Corporations Act, the SIS Act and other Acts to increase accessibility and affordability of personal financial advice by removing regulatory red tape for financial advisers that adds to the cost of financial advice with no benefit to consumers. It implements the Government's response to recommendations 7, 8, 10, 13.1 to 13.5 and 13.7 to 13.9 of the Review, outlined above.

Detailed explanation of new law

Part 1 – Deduction of adviser fees from superannuation

1.8 Part 1 of Schedule 1 to the Bill:

- implements recommendation 7 of the Review by amending section 99FA of the SIS Act to facilitate better access to superannuation and retirement advice by clarifying the legal basis of existing practices in which superannuation trustees pay advice fees from a member's superannuation account at the request of the member; and
- amends the ITAA 1997 to provide legal certainty that payments of certain personal advice fees by a superannuation trustee from the member's interest in the fund are deductible from the superannuation fund's assessable income (to the extent they are not incurred in gaining or producing the fund's exempt or non-assessable non-exempt income) and are not a superannuation benefit for the relevant members.

Division 1: SIS Act amendments

Current law and the Review

Recommendation 7 – Deduction of adviser fees from superannuation

Superannuation trustees should be able to pay a fee from a member's superannuation account to an adviser for personal advice provided to the member about the member's interest in the fund on the direction of the member.

The objective of this recommendation is to provide superannuation fund trustees with more certainty about paying advice fees agreed between a member and their financial adviser from the member's superannuation account and ensure that adviser fees are not paid in breach of the SIS Act and are not taxable benefits for members.

1.9 The SIS Act provides for prudential management and supervision of certain superannuation funds. A trustee of a superannuation fund has obligations under the SIS Act to maintain the fund for the benefit of members, which guide how the trustee manages assets and expenses of the fund. This includes how the trustee charges or pays fees incurred in connection with the fund, such as for financial advice to members, on which the SIS Act contains detailed provisions.

1.10 A number of arrangements facilitate members of a superannuation fund obtaining advice from financial advisers about their superannuation interests. These can include:

- the trustee engaging an adviser to provide simple, non-ongoing advice to its members, with an administration fee collectively charged to all members consistent with section 99F of the SIS Act (also referred to as intra-fund advice);
- an adviser providing advice to a member individually (having been engaged by the trustee or by the member), and the trustee paying the fee for the advice from the member's superannuation interest.

1.11 The amendments in Part 1 clarify the law in relation to the second arrangement by repealing and replacing section 99FA of the SIS Act, which applies to financial advice fees charged directly to individual members.

1.12 Section 99FA of the SIS Act was inserted by the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2020* with the intention of preventing a superannuation trustee from charging a member for the cost of financial product advice provided to the member unless the cost is to be paid in accordance with the terms of an arrangement entered into by the member, the member has expressly consented in writing to being charged for the cost of providing the financial advice, and the trustee has the written consent, or a copy of the written consent.

1.13 However, the Review found section 99FA of the SIS Act does not provide a clear legal basis for a superannuation trustee to pay advice fees from a member's superannuation interest and recommended that it be replaced.

1.14 Recommendation 7 of the Review was that superannuation trustees should be able to pay a fee from a member's superannuation account to an adviser for personal financial advice provided to the member about the member's interest in the fund on the direction of the member. This would provide superannuation fund trustees with more legal certainty about paying advice fees agreed between a member and their financial adviser from the member's superannuation account and ensure that these fees are not taxable benefits for members.

New prohibition against charging certain costs against members' interests

1.15 Division 1 of this Part repeals and replaces section 99FA of the SIS Act to provide greater clarity to superannuation trustees on their existing obligations about when and on what basis a trustee can charge a fee for financial product advice from a member's superannuation interest.
[Schedule 1, item 2, section 99FA of the SIS Act]

1.16 In particular, subsection 99FA(1) as amended replaces the current language 'must not directly or indirectly pass [on] the cost of providing financial product advice' with 'must not charge against a member's interest in the fund the cost of providing financial product advice'. The new language better targets the provision to prohibiting certain costs being charged against members' interests, to improve understanding about the range of arrangements covered.

1.17 Subsection 99FA(1) as amended sets out revised requirements to be satisfied in order for the trustee (or trustees) to charge the cost of advice against the member's interest in the fund. Trustees are expected to apply appropriate oversight controls to ensure that advice fees are consistent with the following requirements:

- the financial product advice is personal advice and is wholly or partly about the member's interest in the fund;
- the amount charged does not exceed the cost of providing financial product advice about the member's interest in the fund;
- the trustee charges the cost in accordance with the terms of a written request or written consent of the member;
- if the arrangement under which the advice is provided is an ongoing fee arrangement – any applicable requirements of Division 3 of Part 7.7A of the Corporations Act are met in relation to the arrangement and, if relevant, the deduction of ongoing fees;

- if the arrangement under which the advice is provided is not an ongoing fee arrangement – the request or consent satisfies the requirements in subsection (2); and
- the trustee has the member's request or consent, or a copy of it.

[Schedule 1, item 2, subsection 99FA(1) of the SIS Act]

1.18 New subsections 99FA(1)(a) and (b) provide clarity to trustees in how their existing obligations (such as under the sole purpose test) apply to the deduction of advice fees from a members' interest in the fund. Consistent with meeting their obligations under the current 99FA, trustees should have in place robust assurance processes to satisfy themselves that advice deductions from members' superannuation accounts comply with their legal obligations. This may include random or risk-based sampling of advice.

1.19 A new explanatory note underneath subsection 99FA(1) of the SIS Act clarifies that a trustee is not required to agree to the member's request to charge the relevant costs even when the requirements are satisfied. This discretion reflects the specific language of recommendation 7 in the Review, and ensures the trustee has flexibility to meet their other obligations under the SIS Act. For example, a trustee could decline the member's request if in their view it does not relate to the member's beneficial interest in the fund or if charging the cost would be inconsistent with the trustee's other regulatory obligations. Section 99FA simply sets out specific rules that must be followed before certain costs can be charged.
[Schedule 1, item 2, subsection 99FA(1) of the SIS Act]

1.20 The second explanatory note underneath subsection 99FA(1) of the SIS Act directs readers to fee rules for MySuper products. The amendments in this Part do not affect the MySuper regime, including its definition of 'advice fee' and the prohibition against charging ongoing advice fees to MySuper products.
[Schedule 1, item 2, note 2 to subsection 99FA(1) of the SIS Act]

Advice requirements

1.21 The first requirement is that the financial product advice must be personal advice that is wholly or partly about the member's interest in the fund.
[Schedule 1, item 2, paragraph 99FA(1)(a) of the SIS Act]

1.22 The requirement that the financial product advice is personal advice narrows the focus of the previous section as to the type of advice. 'Personal advice' has the same meaning as in Chapter 7 of the Corporations Act, and means financial product advice that is given or directed to a person (including by electronic means) in circumstances where:

- the provider of the advice has considered one or more of the person's objectives, financial situation and needs (with certain exemptions); or
- a reasonable person might expect the provider to have considered one or more of those matters.

1.23 The requirement that the advice is wholly or partly about the member's interest in the fund replaces the current requirement that the advice be 'in relation to a member of the fund'. This more targeted approach ensures the advice relates to the member's interest in the fund specifically, rather than to the member or their other interests more broadly.

1.24 The words 'wholly or partly' are intended to clarify that the advice to the member may deal with other matters in addition to their superannuation interest.

1.25 The second requirement, however, is that the amount charged against the member's interest does not exceed the cost of providing financial product advice about the member's interest in the fund. This ensures that, while the advice may deal with other matters in addition to the member's superannuation interest, the cost of providing advice about such other matters is not charged against the member's interest in the fund. This ensures section 99FA of the SIS Act is not used inadvertently to undermine the broader objectives of the superannuation system, such as those embodied in the sole purpose test in section 62 of the SIS Act. The cost of providing financial product advice can be considered the fee charged for providing that advice, that may reasonably be more than the cost of producing the advice.
[Schedule 1, item 2, paragraph 99FA(1)(b) of the SIS Act]

Written consent requirements

1.26 The third requirement is that the trustee or trustees charge the cost in accordance with the terms of a written request or written consent of the member. This reflects the current requirement in paragraph 99FA(1)(b) of the SIS Act, with two changes:

- the concept of 'passing the cost on' is replaced with 'charging the cost', reflecting concerns about this language described in paragraph 1.16; and
- 'written request' of the member is included in addition to written consent. This addition is to more clearly cover situations where the payment is made from a member's superannuation interest on their request or consent.

[Schedule 1, item 2, paragraph 99FA(1)(c) of the SIS Act]

1.27 The fourth requirement is that the trustee must have the member's written request for or consent to the payment of the advice fee, or a copy of the request or consent. This is consistent with the current law, ensures trustees can demonstrate that arrangements are compliant, and supports continued good practice and recordkeeping.

[Schedule 1, item 2, paragraph 99FA(1)(f) of the SIS Act]

1.28 The final requirement is that particular requirements set out below for consent and related matters are met, depending on whether the advice is provided under an ongoing fee arrangement or another arrangement.

Requirements for ongoing fee arrangements

1.29 Paragraph 99FA(1)(d) of the SIS Act applies where the arrangement under which the advice is provided is an ongoing fee arrangement. It requires that any applicable requirements of Division 3 of Part 7.7 of the Corporations Act are met in relation to the arrangement and, if relevant, the deduction of ongoing fees from the fund.
[Schedule 1, item 2, paragraph 99FA(1)(d) of the SIS Act]

1.30 'Ongoing fee arrangement' has the same meaning in the SIS Act as in Part 7.7A of the Corporations Act. Division 3 of Part 7.7A of the Corporations Act provides protection to consumers of financial product advice who agree to pay advice fees on an ongoing basis, including where those fees are deducted from certain accounts.

1.31 Paragraph 99FA(1)(d) of the SIS Act, as amended, continues the current requirement in paragraph 99FA(1)(c) and provides additional protection by referencing any applicable requirements under Division 3 of Part 7.7A of the Corporations Act. For example, this means that a trustee can only charge ongoing advice fees against the member's interest under section 99FA of the SIS Act where the consent requirements of the Corporations Act that apply to ongoing fee arrangements and related deduction arrangements are met.

1.32 This approach ensures consumers are protected and maintains consistency between the SIS Act and the Corporations Act in relation to informed consent.

Requirements for one-off advice

1.33 Where the arrangement under which the advice is provided is not an ongoing fee arrangement, paragraph 99FA(1)(e) of the SIS Act imposes requirements for the written request or written consent for the payment of advice fees. These requirements are set out in subsection 99FA(2), and are explained in more detail below.
[Schedule 1, item 2, paragraph 99FA(1)(e) of the SIS Act]

1.34 The principal purpose of this requirement is to provide for the cost of one-off advice for members, while ensuring informed consent of the member has been obtained in relation to the advice.

1.35 For this type of advice, the current paragraph 99FA(1)(d) of the SIS Act only requires there to be a consent:

- for the trustee or trustees to directly or indirectly pass the cost of providing financial product advice in relation to the member on to the member; and
- that complies with any requirements determined by ASIC.

1.36 These amendments create minimum consent requirements in legislation to better align consent requirements for one-off advice with the amendments made by Part 2 of Schedule 1 to the Bill concerning ongoing fee arrangements.

1.37 New subsection 99FA(2) of the SIS Act requires that the written request or written consent includes:

- the name and contact details of the member;
- the name and contact details of the provider of the financial product advice;
- the name of the fund from which the cost of providing the advice is requested to be paid;
- a brief description of the services the member is entitled to receive under the arrangement;
- a request from, or consent by, the member for the cost of providing the advice to be paid by the trustee and charged against the member's interest in the fund;
- either:
  - the amount to be paid for providing the advice; or
  - if the amount to be paid for providing the advice cannot be determined at the time the request is made or the consent is given, a reasonable estimate of the amount to be paid for providing the advice and an explanation of the method used to work out the estimate;
- either:
  - the amount to be charged against the member's interest in the fund; or
  - if the amount to be charged against the member's interest in the fund cannot be determined at the time the request is made, or the consent is given, a reasonable estimate of that amount and an explanation of the method used to work out the estimate;
- the member's signature;
- the date the request is made; and
- any other information prescribed in the SIS Regulations.

[Schedule 1, item 2, subsection 99FA(2) of the SIS Act]

1.38 These matters are intended to demonstrate informed consent. They are drawn from the *ASIC Superannuation (Consent to Pass on Costs of Providing Advice) Instrument 2021/126*, made under the current subsection 99FA(2) of the

SIS Act, containing the requirements for written consent for the purposes of current paragraph 99FA(1)(d). These matters also align with the new consent requirements for ongoing fee arrangements in the Corporations Act (see Part 2 of this Schedule to the Bill), with adjustments reflecting the difference between ongoing and one-off arrangements and for processes initiated by the member.

1.39 These matters are minimum requirements. While the request or consent must contain the above matters, it may also contain other things to reflect industry best practice, ensure informed consent and reflect the needs of the parties.

1.40 As the request or consent must be in writing and signed, it is intended that the matters in the request or consent must be accurate at the time of signing. Then, provided the costs are charged in accordance with that request or consent, there is no requirement that the trustee or trustees be provided updated details later if matters become inaccurate (for example, if the name and contact details of the provider of the financial product advice change after a consent is signed but before the cost is charged). This derives from the objective of informed client consent.

1.41 The disclosure requirements in subsection 99FA(2) of the SIS Act distinguish between the amount paid for providing the advice and the amount charged against the member's interest in the fund. This distinction is particularly relevant where the advice extends beyond the member's interest, and ensures consent is given both to the total fee for providing advice as well as to the specific amount charged against the member's interest.

1.42 The Minister may approve a form for this request or consent. If a form is approved, the request or consent must be in the approved form. It is important to provide this power to build consistency across industry, and to assist members in managing their superannuation affairs by standardising documentation. This also aligns with parallel amendments made with respect to ongoing fee arrangements in Part 2 of this Schedule.
[Schedule 1, item 2, subsections 99FA(3) and (4) of the SIS Act]

1.43 As explained above in relation to the first explanatory note underneath subsection 99FA(1) of the SIS Act, a trustee is not required to agree to the member's request to charge the relevant costs even if the request is made in the approved form (if any).

Other amendments

1.44 New subsection (5) clarifies that subsection (1) does not apply if the cost of providing financial product advice is shared between the relevant member and other members of the fund through collectively charged fees (also known as 'intra-fund advice'). In effect, this amendment replicates and renumbers the current subsection 99FA(3) of the SIS Act. Subsection 99FA(5), as amended, would not prevent the cost of advice that is not intra-fund advice being proportionally charged to a member's interest in accordance with section 99FA, for instance where personal advice was given to a couple

including that member and the other requirements of section 99FA are met.
[Schedule 1, item 2, subsection 99FA(5) of the SIS Act]

1.45 Division 1 of Part 1 of this Schedule also amends the SIS Act to formalise ASIC's role as regulator of section 99FA under that Act.

1.46 Sections 5 and 6 of the SIS Act determine the general administration of that Act. The table at subsection 6(1) confers the general administration of specified Parts or provisions of the SIS Act on specified regulators.

1.47 Part 11A of the SIS Act deals with general fees rules. This includes rules regarding fees for the cost of providing financial product advice – section 99F for collectively charged fees and section 99FA for fees charged to individual members. Currently, under subsection 6(1) of the SIS Act:

- general administration of section 99F is conferred on ASIC; and
- general administration of the rest of Part 11A – including section 99FA – is conferred on APRA.

1.48 Division 1 of Part 1 of this Schedule amends the SIS Act so that general administration of section 99FA is also conferred onto ASIC.
[Schedule 1, item 1, table item 32 of subsection 6(1) of the SIS Act]

Commencement, application and transitional provisions

Commencement

1.49 The amendments to the SIS Act made by this Division commence the day after Royal Assent ('commencement day').

Application

1.50 These amendments to the SIS Act apply to costs charged on or after the ***start day***, which is defined as the day 6 months after the commencement day. Certain other definitions are provided to distinguish the current provision from its replacement.
[Schedule 1, item 3 of the Bill]

1.51 To this extent, these application arrangements align with equivalent arrangements for the amendments which are made by Part 2 of this Schedule.

1.52 However, to minimise impacts for one-off advice arrangements in force before the start day, transitional arrangements are made in relation to consent to an arrangement where:

- the arrangement was entered into by a member of a regulated superannuation fund under which financial product advice is provided in relation to the member;
- the arrangement was in force immediately before the start day; and

- there is a written consent that meets, or would meet, all requirements of section 99FA as it applies currently.

1.53 For such transitional arrangements, the written consent is taken to satisfy the new written consent requirements of new section 99FA until the earlier of:

- a day on which the arrangement is terminated (including by force of law), varied, or renewed; or
- the end of the period of 12 months beginning on the start day.

[Schedule 1, item 3 of the Bill]

1.54 In practice, this means a consent for an arrangement entered into before the start day in accordance with the consent requirements of current section 99FA can continue to be relied on until the end of the period 12 months after the start day. At this later point in time, the arrangement needs to be covered by consent that meets the requirements of the new section 99FA. However, if the arrangement is varied or renewed within that transitional 12 month period, the replacement arrangement needs to comply with the requirements of the new section 99FA.

1.55 This provision does not apply to new arrangements entered into for the first time after the start day. This includes where an arrangement in force before the start day terminates, and a new arrangement is put in place to replace it (whether a new, renewed, or varied arrangement).

1.56 The provision only makes allowances in relation to written consent in the transitional period. The other requirements of section 99FA not related to the written consent will apply in respect of costs charged after the start day.

Division 2: ITAA 1997 amendments

1.57 Division 2 of Part 1 of this Schedule makes amendments to the ITAA 1997 to ensure that financial advice fees charged under section 99FA of the SIS Act:

- are tax-deductible for the fund that incurred the cost; and
- are not treated as superannuation benefits of the member.

1.58 Where financial advice fees are charged under section 99FA of the SIS Act, it is intended that these be treated as tax-deductible expenses of the fund. While section 8-1 of the ITAA 1997, which deals with general deductions, may apply, these amendments will provide more certainty for industry in the form of a specific deduction for such fees with clear criteria. Section 8-1 will continue to operate to provide a general deduction when its criteria are met.

Specific deduction for superannuation funds

1.59 This Part inserts a new item in the table in section 295-490(1) of the ITAA 1997 to provide a specific deduction which superannuation entities may

claim for certain amounts paid.
[Schedule 1, item 5, table item 5 in subsection 295-490(1) of the ITAA 1997]

Who can claim the deduction?

1.60 This specific deduction is only available to the complying superannuation fund (CSF) and non-complying superannuation fund (N-CSF) entities. The deduction is not available to any other entity, including the fund member or the adviser.

1.61 A complying superannuation fund is defined by section 995-1 of the ITAA 1997 and section 45 of the SIS Act as a fund that APRA has given a notice to under section 40 of the SIS Act in relation to the current or a previous income year.

1.62 A non-complying superannuation fund is in effect any other superannuation fund within the relevant definition in section 10 of the SIS Act.

What can be deducted?

1.63 Amounts can be deducted that meet the criteria discussed below.

1.64 First, the amount is paid by the superannuation provider of the fund. This means the trustee or trustees.

1.65 Second, the amount is for a cost incurred because of the provision of personal advice (explained above) to a member of the fund about the member's interest in the fund. The cost can be incurred by the fund, or, incurred by the member and subsequently reimbursed by the fund.

1.66 Third, the amount must be paid at the request, or with the consent, of the member. A charge authorised by the new section 99FA of the SIS Act, which can only be made at the request or with the consent of the member, will meet this requirement, but it is not necessary for the other requirements of that section to be satisfied before the deduction is available, provided the criteria set out here are satisfied. This means, for example, a deduction under new section 295-490(1) of the ITAA 1997 could be for amounts charged against other members' interests ('intra-fund' advice).

1.67 Fourth, the trustee must have a copy of the written request or consent. The request or consent will constitute a record for tax purposes and must ordinarily be kept for five years.

1.68 Finally, the amount must not be incurred in relation to gaining or producing exempt income or non-assessable non-exempt income.
[Schedule 1, item 5, table item 5 in subsection 295-490(1) of ITAA 1997]

1.69 This final criterion replicates the operation of subsection 8-1(2) of the ITAA 1997, which prevents deductions under that section to the extent that they are incurred in relation to gaining or producing exempt income or non-assessable exempt income. If, in specific circumstances, paying the amount is incurred

partly in producing assessable income and partly in gaining non-assessable or exempt income, the amount must be apportioned between types of income and only the amount attributable to assessable income can be deducted (unless otherwise provided for under the ITAA 1997).

1.70 As per section 6-20 of the ITAA 1997, exempt income means assessable income (ordinary income or statutory income) made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law. The most important type of income of superannuation funds that is exempt income is income from segregated current pension assets or income from other assets used to meet current pension liabilities (in brief, this is income in respect of retirement phase superannuation income stream benefits).

1.71 Under section 6-23 of the ITAA 1997, non-assessable non-exempt income means ordinary or statutory income which a provision of the ITAA 1997 or another Commonwealth law states is not assessable income and is not exempt income.

For which income year?

1.72 This new deduction can only be claimed in the income year that the superannuation fund paid the amount.

Amendments to guidance provisions

1.73 Division 2 of Part 1 of this Schedule adds in a new item into the table in section 12-5 of the ITAA 1997 to refer to the new specific deduction. This table is simply a guide that gives taxpayers an overview of the types of deductions available to types of entities and where to find relevant provisions. ***[Schedule 1, item 4, table item headed 'financial product advice' in section 125 of the ITAA 1997]***

Clarification that an advice fee payment is not a superannuation benefit

1.74 The Review raised concerns that, if section 99FA of the SIS Act is not complied with or an amount is paid out by a superannuation fund to pay an advice fee for advice to a member, the payment could be treated as a benefit paid to the member, and if the member had not satisfied a condition of release, that benefit could be taxable in the hands of the member.

1.75 Superannuation benefits are benefits specified as such in the table under subsection 307-5(1) of the ITAA 1997. Where the benefit is a payment, that payment is treated as being made or received by a person if it is made for that person's benefit or to another person or to an entity at that person's direction or request.

1.76 Section 307-10 of the ITAA 1997 specifies payments that are not superannuation benefits. Division 2 of Part 1 of this Schedule amends this section to include payments that:

- are paid by a superannuation provider of a superannuation fund (as explained above, this is the trustee or trustees);
- are made at the taxpayer's direction or request; and
- relate directly to personal advice within the meaning of Chapter 7 of the Corporations Act (as explained above) which is in relation to the taxpayer's interest in the fund.

[Schedule 1, item 6, paragraph 307-10(e) of the ITAA 1997]

1.77 The requirements for this exemption are similar to but broader than those required by section 99FA of the SIS Act as amended and the new specific deduction created by the new table item in section 295-490(1) of the ITAA 1997 (see above for description of those amendments). In particular, unlike the requirements of the new specific deduction in section 295-490(1) of the ITAA 1997, a payment will be captured by this exemption in section 307-10 of the ITAA 1997 even if the trustee does not have a copy of the request or consent. These broader circumstances reflect the consequences to the taxpayer of a payment being considered a superannuation benefit noted in the Review while ensuring that the exemption is appropriately targeted to the types of advice contemplated by recommendation 7 of the Review.

Commencement, application and transitional provisions

Commencement

1.78 The amendments to the ITAA 1997 provided by this Division commence from the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives the Royal Assent.

Application

1.79 These amendments apply, and the deduction created by them will be available, in relation to the 2019-20 income year and later income years.
[Schedule 1, item 7 of the Bill]

1.80 Retrospective application ensures that the tax law reflects and confirms settled industry understanding, including in respect of past income years. Applying these amendments from the 2019-20 income period aligns with the ATO's power to amend the assessment of a superannuation entity within four years of notice of the original assessment, including in response to the taxpayer's request.

1.81 This retrospective application is not expected to be disadvantageous to those affected by the changes, as it provides affected taxpayers with a specific deduction to reduce their taxable income which is beneficial for those taxpayers.

Part 2 - Ongoing fee arrangements

1.82 Part 2 of this Schedule of the Bill:

- Implements recommendation 8 of the Review by amending the Corporations Act to establish a consolidated and streamlined consent process for when a client enters or renews an ongoing fee arrangement and authorises ongoing advice fees to be deducted from a financial product. As part of these amendments, it removes the current requirement for advisers to provide a fee disclosure statement to their clients as part of an ongoing fee arrangement.

1.83 In this Part, references to 'the Act' are references to the Corporations Act unless specified otherwise.

Current Law

1.84 Division 3 of Part 7.7A of the Act contains provisions relating to charging ongoing fees to retail clients. The purpose of this regime is to ensure that clients have agreed to pay ongoing fees for personal advice, understand the services they can expect to receive for that advice fee, and ensure that arrangements are confirmed at least annually. These requirements were introduced by the *Corporations Amendment (Future of Financial Advice) Act 2012*, following the 2009 *Inquiry into Financial Products and Services in Australia* by the Parliamentary Joint Committee on Corporations and Financial Services.

'Ongoing fee arrangements' and 'fee recipients'

1.85 Sections 962A and 962B of the Corporations Act provides that an ongoing fee is a fee that is payable under an 'ongoing fee arrangement'. This is an arrangement where:

- an AFS licensee or their authorised representative gives personal advice to a person as a retail client; and
- the client enters into the arrangement with the AFS licensee or their authorised representative; and
- under the terms of the arrangement, a fee (however described or structured) is to be paid during a period of more than 12 months.

1.86 Section 761B of the Corporations Act provides that an 'arrangement' means a contract, agreement, understanding, scheme or other arrangement (as existing from time to time):

- whether formal or informal, or partly formal and partly informal; and

- whether written or oral, or partly written and partly oral; and
- whether or not enforceable, or intended to be enforceable, by legal proceedings and whether or not based on legal or equitable rights.

1.87 Section 962A of the Corporations Act provides that certain arrangements are specifically excluded from being ongoing fee arrangements, where, in effect:

- an arrangement is entered into to pay fixed fees by instalments, after advice is given;
- the only fees payable under the arrangement are insurance premiums; or
- the arrangement is of a kind prescribed in the Corporations Regulations that relate to a fee which is prescribed as a product fee.

1.88 Section 962C of the Corporations Act provides that when an AFS licensee or their authorised representative enters into an ongoing fee arrangement, they are called the 'fee recipient' in relation to that arrangement. Where the rights of either are assigned to another person, that person becomes the 'fee recipient' in relation to the arrangement and the AFS licensee or their authorised representative are no longer fee recipients.

Current requirements for ongoing fee arrangements

1.89 Subdivisions B and C of Division 3, Part 7.7A of the Corporations Act set out the disclosure and consent requirements that apply, respectively, to ongoing fee arrangements and to deduction of the fees under those arrangements from accounts.

Requirements for arrangements

1.90 A fee recipient is required to give their client a fee disclosure statement annually no later than 60 days after the anniversary of the day an ongoing fee arrangement was entered into, currently known as the 'anniversary day'. If this requirement has not been complied with in relation to the arrangement, whether by the current or a previous fee recipient, the arrangement terminates. In brief, a fee disclosure statement must provide information about the services provided by the adviser and fees paid by the client in the previous year, as well as about the upcoming year (including reasonable estimates where the amount of the ongoing fee is not yet determined), as well as statements explaining the renewal and termination requirements (see sections 962F, 962G and 962H of the Corporations Act).

1.91 If the arrangement is to continue for a further year, the fee recipient must obtain the client's consent to renew an ongoing fee arrangement within 120 days from the anniversary day. This is currently defined in section 962L as the 'renewal period'. If the client notifies the fee recipient in writing within the

renewal period that the client does not wish to renew the arrangement, the arrangement terminates on the day on which the notification is given. If the client does not notify the fee recipient within the renewal period that they wish to renew the arrangement, the arrangement terminates 30 days after the end of the renewal period. There is no ability for fee recipients and clients to change when the renewal period starts or ends (see sections 962L and 962M of the Corporations Act).

1.92 A current fee recipient in relation to the arrangement who continues to charge an ongoing fee after an ongoing fee arrangement is terminated for any reason breaches a civil penalty provision (see sections 962P and 1317E of the Corporations Act).

Requirements to deduct fees from accounts

1.93 Subdivision C of Division 3, Part 7.7A of the Corporations Act contains specific requirements where ongoing fees under an ongoing fee arrangement are to be deducted from an account that is neither an account linked to a credit card nor a basic deposit product (as defined in section 9 of that Act).

1.94 The person who holds the account, the 'account holder', must give the fee recipient written consent before the fee recipient can deduct amounts from the account in respect of the ongoing fees. This consent must comply with any requirements determined by ASIC under section 962T of the Corporations Act. At the time of introduction, ASIC has determined additional requirements in the *ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124*.

1.95 The account may be provided by the fee recipient themselves in the form of a financial product managed by the fee recipient, or by a third party account provider. In the second case, the fee recipient arranges for the third party to make deductions from the account and pay these to the fee recipient, either directly or through another entity. However, before doing this, the fee recipient must give a copy of the account holder's consent or consents (outlined above) to the account provider.

1.96 An account for these purposes can be the account holder's interest in a superannuation fund as a member of the fund. However, additional requirements must be satisfied before the trustee or trustees of the relevant superannuation fund can charge ongoing fees against the member's interest in the fund, even where the account holder has consented under this Subdivision (see Division 1 of Part 1 of this Chapter).

1.97 Where the account holder holds the account jointly with one or more persons, a written consent meeting these same requirements must be obtained from all account holders.

1.98 Any account holder can, by notice in writing to the fee recipient, withdraw or vary their consent at any time. The fee recipient must then, within 10 business

days of receipt, give written confirmation of receipt to that account holder and give a copy of the notice to any third party account provider.

1.99 Consistent with the renewal requirements for ongoing fee arrangements discussed above, an account holder's consent in relation to an ongoing fee arrangement for the purposes of this Subdivision ceases to have effect at the end of the period of 150 days after the anniversary day unless a new consent is given. It also ceases to have effect if and when the ongoing fee arrangement terminates. If either happen, and the account provider is a third party, the fee recipient must give the provider written notice within 10 business days.

1.100 Any condition of the ongoing fee arrangement, or any other arrangement, that requires the client to give the above consent or not vary or withdraw such consent is void.

1.101 In brief, fee recipients currently breach a civil penalty provision if, without a compliant or effective consent or contrary to a consent as varied, they:

- deduct amounts of an ongoing fee from an account the account holder holds with them;
- arrange for a third party account provider to make a deduction from the account in respect of an ongoing fee; or
- accept a payment reflecting such a deduction by a third party from the account.

1.102 The fee recipient also breaches a civil penalty provision if, within 10 business days of its receipt, they fail to confirm receipt of an account holder's withdrawal or variation of consent or give written notice of cessation of consent to a third party account provider.

The Review

Recommendation 8 – Ongoing fee arrangements and consent requirements

The current provisions which require a provider of advice to give a fee disclosure statement to the client, to obtain the client's agreement to renew an ongoing fee arrangement and the client's consent to deduct advice fees should be replaced. Providers should still be required to obtain their client's consent on an annual basis to renew an ongoing fee arrangement, but they should be able to do so using a single 'consent form'. The consent form should explain the services that will be provided and the fee the adviser proposes to charge over the following 12 months. The consent form should also authorise the deduction of advice fees from the client's financial product and should be able to be relied on by the product issuer. The form should be prescribed.

The objective of this recommendation is to streamline the requirements for ongoing fee arrangement and fee consents, while ensuring that consumers see and agree the fees they are paying their financial adviser.

1.103 The Review found that financial advisers should continue to be required to obtain their clients' consent on an annual basis to renew an ongoing fee arrangement as this is an important consumer protection.

1.104 Recommendation 8 of the Review is that the ongoing fee arrangement and fee consent provisions be replaced and streamlined and the obligation for advisers to provide a fee disclosure statement to their clients should be removed. The client's annual written consent to renew an ongoing fee arrangement and authorisation to deduct advice fees from their financial products should be combined into a single form which can be relied on by all product issuers but is not mandatory.

1.105 Following consultation on the exposure draft legislation, the Government has revised the amendments to include powers for the Minister to approve, and mandate, the use of a standardised consent form for ongoing fee arrangements. This is in response to the feedback from industry that a mandatory form is required if the efficiency benefits of a standard consent form are to be realised.

New standard consent requirements

1.106 To give effect to recommendation 8 of the Review, the Bill repeals and replaces Subdivision B of Division 3 of Part 7.7A of the Corporations Act. The new Subdivision B provides for a consolidated and streamlined consent process when a client enters or renews an ongoing fee arrangement and supports the use of a single consent form. The new Subdivision also replaces the current heading, 'Termination, disclosure and renewal' with 'Client consent required for ongoing fee arrangements' to more clearly describe the contents of the new Subdivision.
[Schedule 1, item 10, Subdivision B of Division 3 of Part 7.7A of the Corporations Act]

Repeal of existing requirements including the requirement to provide a fee disclosure statement

1.107 The repealed Subdivision includes provisions for fee disclosure statements relating to ongoing fee arrangements. The requirement to provide a fee disclosure statement has been removed to reduce the cost of advice for clients.
[Schedule 1, item 10, Subdivision B of Division 3 of Part 7.7A of the Corporations Act]

1.108 However, the repeal of this requirement applies in a modified way for ongoing fee arrangements that are on foot when these amendments apply, 6 months after commencement. This is discussed in the section relating to application and transitional provisions of this Part below.

New requirements for consent

1.109 The requirements for consent (outlined below) reflect and codify in legislation the current requirements applying to consents in relation to deductions of ongoing fees from accounts, contained in the *ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124*.

1.110 Under the amended legislation, client consent is needed to enter or renew an ongoing fee arrangement; if compliant consent is not given, then the agreement terminates. Specifically, it is a condition of an ongoing fee arrangement that it terminates if the client has not given a written consent in relation to the arrangement that complies with new consent requirements in section 962G. Similarly, it is a condition of an ongoing fee arrangement that it terminates if a client originally gave consent in accordance with section 962G but that consent has ceased to have effect and has not been renewed under section 962H. Payment by the client of a fee under the ongoing fee arrangement, for instance through an automated deduction, does not impact the client's right to enforce the termination condition, but the client will not be entitled to a refund of that payment. This new section replaces the current condition of an ongoing fee arrangement that an annual fee disclosure statement be given, to require more active consent from the client.
[Schedule 1, item 10, section 962F of the Corporations Act]

1.111 The requirements for a consent (set out in section 962G) are intended to facilitate informed consent and maintain consumer protection by ensuring the client has sufficient information about the key features of the arrangement, set out in writing in advance, to make an informed decision and has consented to the ongoing fee arrangement in writing.

1.112 Subsection 962G(1) provides that the requirements for a written consent given in relation to an ongoing fee arrangement are that:

- before obtaining the consent, the fee recipient disclosed to the client, in writing, the matters set out in subsection 962G(2) – see below;
- the consent is for the ongoing fee arrangement to be entered into, or renewed (as the case requires), and for the fees disclosed under subsection 962G(2), discussed below, to be charged to the client;
- the consent is signed by the client;
- the consent is dated; and
- the fee recipient has the consent or a copy of the consent.

[Schedule 1, item 10, subsection 962G(1) of the Corporations Act]

1.113 These matters must be disclosed before obtaining consent:

- the name and contact details of the person who is the fee recipient under the ongoing fee arrangement;

- an explanation of why the fee recipient is seeking the consent;
- the maximum period before the consent ceases to have effect, under the renewal requirements in section 962H (discussed further below);
- information about the services that the client will be entitled to receive under the arrangement during that period;
- for each ongoing fee that the client will be required to pay under the arrangement during that period, either the amount of the fee or, if the amount of the fee cannot be determined at the time of disclosure, a reasonable estimate of the amount of the ongoing fee and an explanation of the method used to work out the estimate;
- the frequency of the ongoing fees during that period;
- a statement that the ongoing fee arrangement can be terminated by the client at any time;
- a statement that the arrangement will terminate, and no further advice will be provided or fee charged under it, if the consent is not given;
- the date on which the arrangement will terminate if the consent is not given; and
- information about any other matters prescribed by the regulations.

[Schedule 1, item 10, paragraphs 962G(2)(a) to (j) of the Corporations Act]

1.114 The matters in the written consent must be accurate at the time of signing. A change to the services to be provided would require a variation of the consent or new consent. A change to the name or contact details of the fee recipient (for example, if the fee recipient or client changes their surname by marriage) would not trigger the need to vary or seek new consent – though best practice would be to notify the client of such an update, as a courtesy. The annual renewal process for consent provides an opportunity to revise such details. This approach balances the objective of informed client consent with the aim to streamline administration of ongoing fee arrangements.

1.115 The Corporations Regulations may prescribe additional information to be disclosed, to supplement the core requirements set in the Corporations Act. The diversity and complexity of the financial services industry, and evolving practices, make it necessary for the Government to be able to prescribe additional details which must be provided to the client in writing before the client's written consent is obtained. This will ensure the regulatory framework is kept up to date while providing commercial certainty quickly and efficiently to industry participants.
[Schedule 1, item 10, paragraph 962G(2)(j) of the Corporations Act]

Additional requirements for deduction of ongoing fees

1.116 The consent requirements for deduction of ongoing fees have also been adjusted to reflect the new requirements for consent.

1.117 The current heading for Subdivision C is repealed. It is replaced with a new heading to accurately reflect the new law of consent required for deduction of ongoing fees from accounts.
[Schedule 1, item 11, Subdivision C of Division 3 of Part 7.7A of the Corporations Act]

1.118 Paragraphs 962R(2)(b) and 962S(3)(b), which currently require the account holder's consent to comply with any requirements determined by ASIC under section 962T, are amended to provide that consent must comply with the consent requirements listed in section 962T. The wording has been updated given the consent requirements are now included in section 962T rather than determined in the legislative instrument *ASIC Corporations (Consent to Deductions—Ongoing Fee Arrangements) Instrument 2021/124*. Accordingly, this instrument will be repealed. This change will also make these requirements clearer and more accessible.
[Schedule 1, items 12 and 13, paragraphs 962R(2)(b) and 962S(3)(b) of the Corporations Act]

1.119 Section 962T is replaced so that the new requirements for the account holder's consent for deduction of fees are as follows.

- Before obtaining the account holder's written consent to deduct ongoing fees, the fee recipient must provide the same information, in writing, that is required to be provided to the client when entering or renewing an ongoing fee arrangement, as provided by new subsection 962G(2) and mentioned in paragraph 1.113 above**.**
- A consent is given by the account holder for those ongoing fees mentioned in the previous paragraph to be deducted from the account. The consent must specify the name of the account holder and the account number.
- For each amount to be deducted, the consent must specify the amount to be deducted or, if the amount to be deducted cannot be determined at the time the consent is given, a reasonable estimate of that amount and an explanation of the method used to work out the estimate.
- The consent must be signed by the account holder and include the date of consent.

[Schedule 1, item 14, section 962T of the Corporations Act]

1.120 As is the case currently, where the account is held jointly, the fee recipient must put in place consents that meet new requirements for all account holders. This requirement ensures that the amount and deduction of fees continues to be

visible to all account holders.
[Schedule 1, item 11, note to subsection 962T of the Corporations Act]

1.121 The Corporations Regulations may also prescribe additional requirements. This reflects the similar provision in respect of ongoing fee arrangements created by paragraph 962G(2)(j) (discussed above) and is included for similar reasons, as well as to ensure that supplementary requirements specific to deduction arrangements can be put in place.
[Schedule 1, item 14, paragraph 962T(g) of the Corporations Act]

1.122 Minor amendments are made to section 962V of the Corporations Act to remove references to 'anniversary day'. Section 962V provides that a client's consent for the deduction of ongoing fees ceases to have effect either at the end of the period of 150 days after the anniversary of the day on which the ongoing fee arrangement was entered into, when the ongoing fee arrangement is terminated or at the time new consent is given. Where the consent ceases to have effect for any of these reasons, the fee recipient must give written notice to the account holder, or to all account holders if the account is held jointly, within 10 business days of the consent no longer having effect.
Subsection 962V(3) is repealed to remove a civil penalty provision for when the fee recipient does not provide written notice within 10 business days of the cessation as the consumer harm is disproportionate to the penalty.
[Schedule 1, items 16 and 17, subsection 962V of the Corporations Act]

1.123 It is a condition of the ongoing fee arrangement that if the requirements under sections 962R and 962S are not complied with, the arrangement terminates.
[Schedule 1, item 18, subsections 962WA(1) of the Corporations Act]

1.124 The client is not taken to have waived their rights or to have entered into a new ongoing fee arrangement if the client has given consent that covers the deduction of ongoing fees from the account after the arrangement has terminated. This is because the client consents to deductions of ongoing fees in advance but should not continue to be liable for them if the arrangement is terminated as a result of the fee recipient not complying with the requirements under sections 962R and 962S.
[Schedule 1, item 18, subsection 962WA(2) of the Corporations Act]

1.125 If a client gives consent for the deduction of ongoing fees from the account after the arrangement terminates as a result of the fee recipient not complying with the requirements under sections 962R or 962S, the fee recipient is not obliged to refund an amount deducted or received as a result of a deduction made in accordance with that consent. This is because the client is taken to have given new consent after the arrangement has terminated.

1.126 However, the client has the right to apply to the Court for a refund where a fee recipient has knowingly or recklessly continued to deduct ongoing fees from the account after the arrangement has terminated as a result of breaching the requirements under sections 962R and 962S. This ensures the client has a right

to redress.
[Schedule 1, item 18, subsection 962WA(3) of the Corporations Act]

Common rules for consents and new power to approve mandatory form

1.127 Subdivision D of Division 3 of Part 7.7A of the Corporations Act currently sets out the appropriate records fee recipients must keep to show their compliance with Division 3. To give effect to recommendation 8 of the Review, Subdivision D is updated to include the provision of a single consent form and provision for combining information.

1.128 The heading to Subdivision D is repealed and replaced with a new heading, 'Common rules for consents under this Division', to accurately reflect the new contents and structure.
[Schedule 1, item 19, heading to Subdivision D of Division 3 of Part 7.7A of the Corporations Act]

1.129 The law is updated to insert a new section 962Y. This section provides that the Minister may approve one or more forms for giving consent to enter into or renew an ongoing fee arrangement or authorise the deduction of ongoing fees. Approved forms could be relied on by advisers and product issuers as evidence of a client's consent. The approved forms can be in relation to one or more of the following:

- entering into an ongoing fee arrangement;
- renewing an ongoing fee arrangement;
- deducting an amount in respect of ongoing fees from an account;
- arranging to deduct an amount in respect of ongoing fees from an account.

[Schedule 1, item 20, subsection 962Y(1) of the Corporations Act]

1.130 The ability to approve multiple forms and the requirement that the approved form be in relation to the circumstances specified is intended to give the Minister appropriate flexibility in determining consent forms to respond to evolving practices in the industry and the regulatory context. There is also no requirement for the Minister to approve a form if this is not appropriate.

1.131 If the Minister approves a consent form under new section 962Y, a consent given for the purposes of the Division must be in the approved form.
[Schedule 1, item 20, subsection 962Y(2) of the Corporations Act]

1.132 There is no requirement for the Minister to approve a form or a form for all circumstances, however, where the Minister approves a form, that form becomes mandatory for collecting a consent. If the Minister approves a mandatory form, it will help to standardise information collection requirements and reduce administrative burdens on industry and provide certainty that a consent satisfies regulatory requirements.

1.133 A consent being in the approved form only satisfies the consent requirements of Division 3 of Part 7.7A of the Corporations Act. An account provider (other than the fee recipient) may request additional information before deducting ongoing fees from an account and may decide not to allow deduction of fees from the account. For example, the deductions may be inconsistent with product rules, or if the account provider is the trustee of a regulated superannuation fund, deducting ongoing fees from the account holder's interest in the fund may be inconsistent with the SIS Act.
[Schedule 1, item 20, note to subsection 962Y(1) of the Corporations Act]

1.134 If a person is required to give more than one notice or forms under Division 3 of Part 7.7A of the Corporations Act, section 962YA provides that the information may be combined and given in a single notice or form. This reduces the complexity of multiple forms and allows for the requirements of various forms or notifications to be satisfied by either one form or notification. As examples:

- If a fee recipient is required to provide written notice to a client that an ongoing fee arrangement and the authority for the deduction of an ongoing fee is terminated, the fee recipient can provide written notice of each termination together in a single notice.
- Consents can be consolidated for ongoing fees which are deducted from multiple accounts, including across multiple account providers or product issuers.
- If the Minister has approved two forms for different aspects of the same circumstance (such as one form for ongoing fee arrangements generally, and another form to be used where ongoing fees are deducted from the client's interest in a superannuation fund), both forms can be consolidated into one form in a manner consistent with both forms as approved.

[Schedule 1, item 20, subsection 962YA(1) of the Corporations Act]

1.135 If a single notice or form is provided to satisfy the requirements of more than one notice or form, the single notice or form must satisfy all of the respective requirements for each of those notices and forms as if they were being given individually. The single notice would need to be provided on a date that satisfies the requirements for each individual notice. For example, if a fee recipient provides written notice to a client that an ongoing fee arrangement and the authority for the deduction of an ongoing fee is terminated, the fee recipient needs to ensure the single notice is provided within 10 business days of each event. The single notice or form must also clearly state the purposes for which it is being given.
[Schedule 1, item 20, subsection 962YA(2) of the Corporations Act]

1.136 Current section 962X is retained, which requires a fee recipient in relation to an ongoing fee arrangement to keep records sufficient to enable the fee

recipient's compliance with the Division in relation to the ongoing fee arrangement, including as amended by this Bill, to be readily ascertained. Failing to do this is a criminal offence, punishable for individuals by up to five years imprisonment and/or a fine of 120 penalty units, and for bodies corporate a fine of 1,200 penalty units.

Increased flexibility for renewal of consent

1.137 Part 2 of this Schedule to the Bill also makes amendments to provide fee recipients and clients additional flexibility in the timing of renewals of consents for ongoing fee arrangements and deduction arrangements.

1.138 While consent continues to be required at least annually, these amendments provide flexibility so that there is an extended window of time around that annual date in which consent can be renewed to ongoing fee arrangements and deduction arrangements and gives clients and advisers the ability to agree an earlier renewal date at the time a consent is first signed or renewed. This flexibility responds to industry needs for a more practical approach by providing two options for clients and advisers who need additional flexibility around signing ongoing fee arrangement renewals.

1.139 Amendments to Subdivisions B and C of Division 3 of Part 7.7A of the Corporations Act have been made in a way that removes references to the defined terms 'anniversary day' and 'renewal period' consistent with best practice of not using defined terms that are used infrequently or only relate to narrow or specific circumstances.

1.140 Then, flexibility for renewal of consent is provided by new section 962H, which specifies when a new consent given in relation to an ongoing fee arrangement must be put in place before an existing consent ceases to have effect for the purposes of subsection 962F(1). This section contains three important changes.

1.141 Firstly, a consent can specify a day to be used as a reference day for determining when the renewal period, as currently understood, will start (the day determined under new subsection 962H(2)). This means that a fee recipient and a client can agree on an earlier, more convenient day to be used in working out the renewal period and so that renewal can occur in a period that better suits their schedules on an annual basis.
[Schedule 1, item 10, paragraph 962H(2)(a) of the Corporations Act]

1.142 A day agreed for this purpose must be specified in the consent documentation. Any consent can also specify a day as the reference day for when the next renewal period will start, but a date specified will be used to determine the next renewal unless and until it changes again. This is because, if no date is specified in a consent for this purpose, the reference date for the next consent's renewal period will be the anniversary of the previous specified date, or for the

first renewal, the anniversary of the day on which the arrangement is entered into.

1.143 The default renewal schedule therefore also remains based on the anniversary of the day on which the arrangement is entered, unless the fee recipient and client decide to change this.
[Schedule 1, item 10, paragraph 962H(2)(b) of the Corporations Act]

1.144 It would not be contrary to law to specify a day later than either the anniversary of the most recent date specified or when the arrangement was entered into (whichever applies). However, this will have no effect, as only the earlier of the two will determine the start of the next renewal period.

1.145 Secondly, a new consent can validly be given up to 60 days before the reference day discussed above (a specified date, or the default schedule based on the anniversary of the day the arrangement was entered into). This gives the fee recipient and client a buffer period to accommodate new or unforeseen circumstances that make it more practicable to give consent earlier than this day.
[Schedule 1, item 10, paragraph 962H(1)(b) of the Corporations Act]

1.146 Finally, a new compliant consent must be given on or before 150 days after the reference date discussed above. The new 150 day period during which a new consent must be put in place standardises the applicable periods for both ongoing fee arrangements and deductions of ongoing fees from accounts. As discussed above, the renewal period for ongoing arrangements is currently only 120 days, except that an arrangement remains on foot for a further 30 days if no new consent is put in place.
[Schedule 1, item 10, paragraph 962H(1)(b) of the Corporations Act]

1.147 Taken together, these amendments have effect such that, each year, a new consent that complies with the requirements of section 962G must be put in place in the period that starts 60 days before and ends 150 days after:

- a day specified in the consent currently on foot; or
- if no such day is specified, the anniversary of:
  - the most recent day specified for this purpose in a consent; or
  - if no such day has ever been specified, the day on which the arrangement was entered into.

1.148 If this does not happen, the consent on foot ceases to have effect at the end of the above period, at which point the arrangement terminates.
[Schedule 1, item 10, paragraph 962F(1)(b) of the Corporations Act]

1.149 The current law for consents for deductions from accounts discussed above is maintained. This reflects the general intent to streamline consent arrangements for ongoing fee arrangement and deductions of ongoing fees from accounts.

Example 1.1

Tara is the fee recipient for an ongoing fee arrangement with a client, Javier. This arrangement was entered into on 11 August 2025. In the first consent form Javier signed, no date was specified as the reference date for the purposes of paragraph 962H(2)(a).

Assuming the arrangement does not otherwise terminate, the period during which a new consent must be put in place is based on the anniversary of the day on which the arrangement is entered into, namely 11 August 2026. The earliest date Tara and Javier can put in place a new, compliant consent is 60 days before that date (12 June 2026). The new consent must also be put in place no later than 150 days after that date (8 January 2027). If Javier does not renew his consent during this window, his consent will cease to have effect and their arrangement will terminate.

When putting this new consent in place, Tara and Javier decide it would be more convenient for the renewal schedule to align with financial years, since Javier often comes in to see Tara shortly after the start of each new financial year anyway. They therefore decide to specify a new date of 1 July 2027 in this consent. This new date will be effective, as it is earlier than the date that would otherwise be the next reference date (11 August 2027).

Next year, Tara and Javier will be able to put in place a new consent from 2 May 2027 (being 60 days before 1 July 2027). A new consent must then be put in place before 28 November 2027 (being 150 days after 1 July 2027) or their arrangement will terminate. This same schedule will also continue for each subsequent year unless and until Tara and Javier decide to change it.

Other amendments

Repeal of civil penalties for failure to notify

1.150 A civil penalty no longer applies if a fee recipient, on receipt of a notice from any account holder varying or withdrawing their consent to deductions being made from an account, fails to give the following within 10 business days:

- written confirmation to the account holder that the notice was received; or
- a copy of the account holder's notice to any third party account provider.

[Schedule 1, item 15, repeal of subsection 962U(3) of the Corporations Act]

1.151 A civil penalty no longer applies if the fee recipient fails, within 10 business days, to give any third party account provider notice that a consent for account deductions has ceased to have effect (for example because a new compliant consent has not been put in place within the required period).
[Schedule 1, item 17, repeal of subsection 962V(3) of the Corporations Act]

1.152 Fee recipients are still required to comply with these notification obligations, as part of their obligations to comply with financial services law. While civil penalties no longer apply, other regulatory consequences continue to exist in relation to noncompliance with financial services law. Consequences may include the exercise of banning, disqualification, or licence suspension powers by ASIC or Financial Services and Credit Panels under Divisions 8 and 8B of Part 7.6 of the Corporations Act. However, breaches are no longer a breach of civil penalty provisions, as this is disproportionate to consumer harm.

Consolidated rules for termination under the Division

1.153 Under subsection 962F(1), it is a condition of an ongoing fee arrangement that the arrangement terminates if either:

- there is no consent given by the client that meets the new consent requirements set out in section 962G, or
- such a consent ceases to have effect and a new, compliant consent has not been put in place in the way discussed above.

[Schedule 1, item 10, subsection 962F(1) of the Corporations Act]

1.154 Termination under this condition happens automatically and at the time the relevant circumstances happen. For example, if an arrangement is entered into that meets the definition of an ongoing fee arrangement but the requirements for consent are not met, the arrangement terminates immediately on being entered into.

1.155 The client is not taken to have waived their rights or to have entered into a new ongoing fee arrangement by merely continuing to pay an ongoing fee after an arrangement terminates automatically in this way. This provision recognises that often the mechanism by which clients pay for ongoing advice services is through an automated process (for example, by a monthly direct debit from the client's investment), rather than being paid personally: it caters for situations where an arrangement terminates and the deduction of fees occurs before the client receives notification of termination.
[Schedule 1, item 10, subsection 962F(2) of the Corporations Act]

1.156 Further, if a client makes a payment of an ongoing fee after the arrangement terminates automatically under this condition, the fee recipient is not obliged to refund the payment in full. This is consistent with the current law.
[Schedule 1, item 10, subsection 962F(3) of the Corporations Act]

1.157 However, the client has the right to apply to the Court for a refund, as a debt due to the client, where a fee recipient has knowingly or recklessly continued to charge a client what purports to be an ongoing fee under an arrangement. The Court will only make such an order if it is reasonable in all the circumstances and cannot make an order in relation to fees paid more than 6 years before the proceedings for the order are commenced. ASIC can also apply for such an order, and the Court can make one on its own initiative during proceedings before the Court. This ensures the client has a right to redress.
[Schedule 1, item 26, section 1317GA of the Corporations Act]

1.158 Several existing provisions relating to termination are also moved and consolidated to better reflect the new structure of Division 3 of Part 7.7A of the Corporations Act:

- Current subsections 962E(1) and (2) are moved to subsections 962J(1) and 962J(4) respectively.
- The substance of current section 962FA, which relates to automatic termination of ongoing fee arrangements where a fee is deducted without consent, is relocated into Subdivision C (which deals with deduction of ongoing fees) as new section 962WA.
- Current sections 962P and 962Q are moved to a new Subdivision E—Common rules for terminations under this Division, as sections 962Z and 962ZA respectively.

1.159 It continues to be a condition of the ongoing fee arrangement that the client may terminate the arrangement at any time. This is intended to prevent clients being locked into ongoing fee arrangements that they do not want to continue.
[Schedule 1, item 10, subsection 962J(1) of the Corporations Act]

1.160 It is also clarified that to terminate the arrangement the client must give a notice to the fee recipient in writing that the client wishes to terminate the arrangement. The arrangement will terminate on the day on which the client gives notice to the fee recipient.
[Schedule 1, item 10, subsections 962J(2) and (3) of the Corporations Act]

1.161 If an ongoing fee arrangement terminates for any reason, the fee recipient must not continue to charge a fee that purports to be an ongoing fee under the arrangement to the client. If the fee recipient does this, the fee recipient is subject to a civil penalty provision. This substantially replicates the current section 962P except that it clarifies that the fee whose charging constitutes the contravention is in fact no longer authorised by the ongoing fee arrangement that it relates or purports to relate to.
[Schedule 1, item 20, subsection 962ZA and section 1317E of the Corporations Act]

1.162 Any condition of an ongoing fee arrangement that requires the client to pay an amount if they terminate the arrangement is void if the amount required is

larger than the sum of any liabilities accrued but not paid by the client before the arrangement was terminated and any costs the current fee recipient has incurred solely and directly because of the termination.

1.163 This provision continues the operation of the current law. It ensures that clients are not subject to a financial penalty if they choose to exercise their right to terminate an ongoing fee arrangement, but also allows fee recipients to recover any outstanding monies already owed by a client and any costs directly incurred by the fee recipient as a result of the termination. In most situations costs incurred by a fee recipient as a result of a termination are expected to constitute only a modest sum.
[Schedule 1, item 10, subsection 962J(4) of the Corporations Act]

1.164 To the extent that the continued provision of a service by the fee recipient is dependent on the continued payment of an ongoing fee under the ongoing fee arrangement, the obligation to continue to provide the service also terminates. When an ongoing fee arrangement terminates, if the continued provision of a service by the fee recipient depends on the continued payment of an ongoing fee under the arrangement, the obligation to continue to provide the service also terminates. This provides certainty to the fee recipient that in most cases their obligation to provide continued advice services ceases after termination, as does their liability for the failure to provide continued advice services.

1.165 This clarification is particularly important in situations where the client does not directly terminate an ongoing fee arrangement, but instead the arrangement is terminated by the client's failure to renew the arrangement before the end of the renewal period. While a fee recipient remains liable for any advice they have provided prior to termination, they cannot be liable for client losses because of a failure to provide advice to a client after termination.
[Schedule 1, item 20, section 962ZA of the Corporations Act]

Technology neutral sending of documents

1.166 Division 2 of Part 1.2AA of the Corporations Act is amended to cover documents required or permitted to be sent by senders to recipients under Division 3 of Part 7.7A. This will give comfort and certainty to AFS licensees, their authorised representatives, and clients that documents permitted or required to be sent in relation to ongoing fee arrangements can be sent electronically.

1.167 Section 110C in Division 2 of Part 1.2AA provides that certain documents can be sent electronically (referred to as 'covered documents'). Subsection 110C(3) is amended to include documents required or permitted to be sent by Division 3 of Part 7.7A.
[Schedule 1, item 9, paragraph 110C(3)(da) of the Corporations Act]

1.168 These amendments will cover a 'document' that is 'required or permitted to be sent' under Division 3 of Part 7.7A.

1.169 Under section 2B of the *Acts Interpretation Act 1901*, 'document' has a broad meaning and includes any record of information, including anything on which there is writing; marks, symbols or perforations; sounds, images, or writings; and maps, plans, drawings or photographs.

1.170 'Sending' a document is given a broad meaning here and will include expressions occurring in Division 3 of Part 7.7A such as 'sending', 'giving', 'serving', 'dispatching' or any other expression.

1.171 It is intended that this amendment will cover records including:

- written consent or consents given in relation to an ongoing fee arrangement by the client or account holders in relation to deductions from accounts, including documents prepared in advance of that written consent being signed (such as proposed written consents given by the fee recipient for signing);
- matters to be disclosed by the fee recipient under sections 962G(2) and 962T, and information referred to in those matters;
- notices given by the client in relation to the ongoing fee arrangement or deduction of ongoing fees from an account, such as a client's termination of the ongoing fee arrangement under subsection 962J(2) or withdrawal of consent to deductions from an account under paragraph 962U(1)(a);
- copies of account holders' consents given to third party account providers under paragraph 962S(3)(c); and
- notifications given by fee recipients to account holders and third party account providers when a consent to deduction of ongoing fees from accounts has been varied or withdrawn by an account holder, or has ceased to have effect, under subsection 962U(2) and 962V(2) respectively.

1.172 If a document is covered by section 110C of the Corporations Act, then Division 2 of Part 1.2AA ensures that if, at the time the document is sent, it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference, the document can be sent by:

- sending the recipient sufficient information in physical form to allow the recipient to access the document electronically;
- sending the document in electronic form by means of an electronic communication (for example by email); or
- sending the recipient sufficient information in electronic form, by means of an electronic communication, to allow the recipient to access the document electronically.

1.173 An example of dot point three above would be sending a client a link in an email to disclosure matters in a document stored in the cloud, provided that it was reasonable to expect that the client could readily access that cloud document for subsequent reference in the future.

1.174 The documents are also able to be sent in physical form.

1.175 The Corporations Act currently contains arrangements ensuring that documents required or permitted to be signed by a person can be signed in a technologically neutral way. This is not amended, and is intended to apply to signing of written consents under paragraphs 962G(1)(c) and 962T(e) of the Act as amended by this Schedule to the Bill. In brief, the Corporations Act currently ensures that documents required or permitted to be signed by a person under the Act can be signed by:

- signing a physical form of the document by hand; or
- signing an electronic form of the document using electronic means using a method that identifies the person and meets general reliability requirements set out in section 110A of the Corporations Act.

1.176 Division 1 of Part 1.2AA of the Corporations Act contains other general requirements and clarifications relating to technology neutral signing.

Consequential amendments

1.177 This Schedule to the Bill amends the table in subsection 1317E(3) of the Corporations Act to make consequential amendments:

- repealing the reference and civil penalty currently attached to subsection 962G(4), relating to fee disclosure statements;
- repealing the civil penalties currently attached to the notification obligations in subsection 962 (discussed above in relation to the Repeal of civil penalties for failure to notify); and
- replacing the civil penalty attaching to section 962P with a reference to section 962Z (discussed above in relation to Consolidated rules for termination under the Division).

[Schedule 1, items 21 to 23, table in subsection 1317E(3) of the Corporations Act]

1.178 The effect is that a fee recipient may continue to be liable for a civil penalty if they charge a fee that purports to be an ongoing fee under an arrangement after that arrangement is terminated, deduct ongoing fees from an account without consent, arrange for deductions from an account to be made without consent, or accept payment of ongoing fees from an account without consent.

1.179 The table under subsection 1317G(1A) is amended to repeal items which are incorrectly listed. Section 1317G relates to when a Court may make pecuniary

penalty orders for contravention. In general the Court can do this when it has made a declaration of contravention of the civil penalty provision, but paragraph (c) attaches specific conditions for financial services civil penalty provisions except in respect of those listed in the table under subsection (1A). Items 4 to 9 in this table are not financial services civil penalty provisions and are removed.
[Schedule 1, item 24, column 3 of the table in subsection 1317E(3) and subsection 1317G(1A) of the Corporations Act]

1.180 The amendments update section 1317GA of the Act, which deals with when a Court may order that a fee recipient refund a fee paid to the recipient by the client if the Court is satisfied that the fee recipient knowingly or recklessly charged the client the fee after the termination of the ongoing fee arrangement. The amendments reflect the replacement of section 962P by section 962Z, and are also discussed above in relation to Consolidated rules for termination under the Division.
[Schedule 1, items 25 and 26, heading to section 1317GA and paragraph 1317GA(1)(a) of the Corporations Act]

Commencement, application and transitional provisions

1.181 The amendments made by Part 2 of Schedule 1 to this Bill commence the day after this Bill receives Royal Assent.

1.182 Application and transitional arrangements are inserted in new Part 10.78 of Chapter 10 of the Corporations Act. The amendments made by Part 2 of this Schedule do not apply until 6 months after commencement of this Part. This date 6 months after commencement is defined in Part 10.78 as the 'start day'.
[Schedule 1, item 27, Part 10.78 of the Corporations Act]

1.183 After the start day, some amendments apply immediately, and others apply in different ways to new and existing ongoing fee arrangements.

Repeal of certain civil penalty provisions

1.184 Subsections 962U(3) and 962V(3) in the current law are repealed in respect of conduct occurring wholly on or after the start day. This means a fee recipient no longer contravenes a civil penalty if they fail within 10 business days to give:

- written confirmation to the account holder that the notice was received; or
- a copy of the account holder's notice to any third party account provider.

[Schedule 1, item 27, paragraph 1708B(6)(b) of the Corporations Act]

1.185 The repeal of the current section 962P and replacement by section 962Z also applies in respect of conduct occurring wholly on or after the start day. As discussed above in relation to Consolidated rules for termination under the Division, section 962Z substantially replicates the current section 962P except that it clarifies that the fee whose charging constitutes the contravention is in fact no longer authorised by the ongoing fee arrangement that it relates or purports to relate to.
[Schedule 1, item 27, paragraphs 1708B(6)(a) and (c) of the Corporations Act]

Application to new ongoing fee arrangements

1.186 Where an ongoing fee arrangement is entered into after the start day – a new ongoing fee arrangement – the amendments apply to that arrangement without modification.
[Schedule 1, item 27, section 1708A of the Corporations Act]

Application to existing ongoing fee arrangements

1.187 Where an ongoing fee arrangement was entered into and remains in force immediately before start day – an existing ongoing fee arrangement – the amendments apply in a modified way that preserves the operation of these arrangements until new renewals would otherwise need to be put in place, at which point consents consistent with these amendments, with some minor modifications, can be put in place.
[Schedule 1, item 27, subsection 1708B(1) of the Corporations Act]

1.188 Except as specified below, the amendments made by this part apply to existing ongoing fee arrangements on and after the first anniversary day, as defined in the current law (the first anniversary of the day on which the arrangement was entered into) that occurs after the start day. This is the 'transition day'.
[Schedule 1, item 27, sections 1708 and subsection 1708B(2) of the Corporations Act]

1.189 The current obligations on fee recipients (including to give the client a fee disclosure statement) are replaced by the new obligations in respect of an ongoing fee arrangement from its transition day. For an existing fee arrangement whose anniversary day occurs before the start day, the current obligations on fee recipients continue to apply (including the requirement to provide a fee disclosure statement) and will be replaced by the new obligations for that arrangement from the next anniversary day (being the transition day).

1.190 The law provides a modified renewal period of ongoing fee arrangements which are in force immediately before the start date. After the start day, a consent that complies with new requirements must be put in place within a modified renewal period that starts whichever is the later of:

- the start day, and
- 60 days before the arrangement's transition day.

1.191 If this is not done, the arrangement will terminate at the end of the renewal period, 150 days after the transition day.
[Schedule 1, item 27, subsection 1708B(3) of the Corporations Act]

1.192 This modified renewal period ensures existing ongoing fee arrangements have the benefit of the amendments in this Part that increase flexibility in renewing consent after the start day.

1.193 The repeal of the current section 962FA and amendments made by this part to Subdivision C of the Division do not apply until 150 days after the transition day. This ensures that deductions of ongoing fees from an account in respect of an existing ongoing fee arrangement that are consistent with a consent under the current law but not the new law do not terminate until the end of the 150 day renewal period following that arrangement's transition day. This operates to enable a new consent to be put in place under the modified renewal period created by these application arrangements while ensuring that, at the end of that period, the arrangement terminates if this has not been done and any deductions continue from the account would be a contravention of a civil penalty provision.
[Schedule 1, item 27, subsection 1708B(4) of the Corporations Act]

1.194 New sections 962Y and 962YA, relating to forms for consent, only apply to an ongoing fee arrangement to the extent that these amendments apply to that arrangement as discussed above. For example, if the Minister were to approve under section 962Y a form to be used in giving any consent, and this was done before the start day, this would only be mandatory to use for a new ongoing fee arrangement and for the first consent for an existing ongoing fee arrangement that was put in place under new arrangements (in the manner discussed above).
[Schedule 1, item 27, subsection 1708B(5) of the Corporations Act]

Example 1.2

Amanda is the fee recipient for an ongoing fee arrangement with a client, Ravi. The anniversary day of that arrangement as currently defined is 15 December annually. Ravi has also agreed for ongoing advice fees under the arrangement to be deducted from an account he holds with Amanda.

Under the current law, for the anniversary day of 15 December 2024, Amanda is required to give the client, Ravi, a fee disclosure statement for the arrangement on or before 13 February 2025. If she does not, the arrangement will terminate and Amanda will have contravened a civil penalty provision. Ravi must also notify Amanda on or before the end of the 120 day renewal period (as also defined in current law) that he wants to renew the arrangement. For this arrangement, that period ends on 14 April 2025. If he does not do this, the arrangement will terminate 30 days later on 14 May 2025.

If the amendments made by this Part commence on 1 July 2024, the start day will be on 1 January 2025. However, as Amanda's and Ravi's arrangement is an existing ongoing fee arrangement, the amendments made by this Part do not apply until the transition day for this arrangement, which will be 15 December 2025, not 15 December 2024. The requirements under current law would continue to apply for both Amanda and Ravi. However:

- Amanda and Ravi would be able to put a consent consistent with new requirements in place on and from 16 October 2025, 60 days before the next anniversary of the arrangement on 15 December 2025;
- from 15 December 2025, Amanda would no longer be required to give Ravi a fee disclosure statement; and
- if no consent is put in place consistent with new requirements by 14 May 2026, the arrangement will terminate.

Some amendments would apply to this arrangement from 1 January 2025, however. If, after 1 January 2025, Ravi emailed Amanda that he no longer wanted advice fees to be deducted from the account with Amanda and instead he wanted them deducted from his ordinary bank account, Amanda would still be obliged to confirm within 10 business days that she had received Ravi's email, however she would no longer contravene a civil penalty provision if she did not.

Example 1.3

Milo is the fee recipient for an ongoing fee arrangement with a client, Kira. The anniversary day of that arrangement as currently defined is 1 February annually.

If the amendments made by this Part commence on 1 July 2024, the start day will be on 1 January 2025. As Milo and Kira's arrangement is an existing ongoing fee arrangement, most amendments made by this Part start to apply from its transition day, which is 1 February 2025 (the next anniversary day after the start day).

However, Milo and Kira can put in place a consent under new arrangements from and after the start day on 1 January 2025. This is because application arrangements ensure Milo and Kira can get the benefit of the amendments giving increased flexibility in renewing ongoing fee arrangements and specifically permitting valid renewal of consent up to 60 days before an anniversary of the day on which the arrangement was entered into. However, since 60 days before the transition day of this arrangement would be

before the start day, the start day is the earliest that a consent under new arrangements can be put in place.

Milo and Kira must put in place consent consistent with new requirements on or before 1 July 2025, 150 days after the transition day. If they do not, the arrangement will terminate.

As in the previous example, some amendments would apply to this arrangement from 1 January 2025.

Example 1.4

Maddi is the fee recipient for an ongoing fee arrangement with a client, Sonia. The anniversary day of that arrangement as currently defined is 5 March annually.

If the amendments made by this Part commence on 1 July 2024, the start day will be on 1 January 2025. As Maddi and Sonia's arrangement is an existing ongoing fee arrangement, most amendments made by this Part start to apply from its transition day, which is 5 March 2025 (the next anniversary day after the start day).

Maddi and Sonia can put in a place a consent under new arrangements from and after 5 January 2025. This day is 60 days before the transition day. Maddi and Sonia must put in place consent consistent with new requirements on or before 2 August 2025, 150 days after the transition day. If they do not, the arrangement will terminate.

As in the previous example, some amendments would apply to this arrangement from 1 January 2025.

Part 3 – Flexibility for FSG requirements

1.195 Part 3 of Schedule 1 to the Bill:

- Implements recommendation 10 of the Review by amending the Corporations Act to allow providers of financial product advice to either continue to give their clients an FSG or instead make the FSG information publicly available on their website.

Current law

1.196 Part 7.7 of the Corporations Act imposes a range of disclosure obligations on entities that provide financial services. Division 2 of Part 7.7 deals with the

obligation to provide an FSG to a retail client before providing a financial service to that client.

1.197 The purpose of an FSG is to provide retail clients with enough information to decide whether to obtain financial advice (or any other financial service) from an AFS licensee or its authorised representative. Along with other financial services disclosure obligations, the FSG aims to ensure that clients are able to make informed decisions by providing key information about services provided and any arrangements, relationships or remuneration which might influence the service or advice a client receives. It also provides information about dispute resolution options.

1.198 Sections 941A and 941B of the Corporations Act provide that an AFS licensee, or an authorised representative of an AFS licensee, who provides a financial service to a retail client must give them an FSG. Section 941D of the Corporations Act provides that the FSG must be given as soon as it is apparent that a financial service will be provided or is likely to be provided. Under sections 941E and 941F of the Corporations Act, if there is a material change to information which is included in an FSG, an up to date or supplementary FSG must be given to a client before further financial services are provided.

1.199 Sections 942B (for AFS licensees) and 942C (for authorised representatives) of the Corporations Act cover the information that must be included in an FSG.

1.200 A range of civil penalties and offences apply for failure to comply with FSG disclosure requirements.

1.201 Section 941C of the Corporations Act lists situations in which an FSG is not required.

The Review

Recommendation 10 – FSG

Providers of personal advice should either continue to give their clients a FSG or make information publicly available on their website about the remuneration and any other benefits the provider receives (if any) in connection with the financial services they provide and their internal and external dispute resolution procedures (and how to access them).

The objective of this recommendation is to increase the flexibility and efficiency of the regulatory framework, while ensuring that consumers retain access to important information relevant to the financial services they receive.

1.202 The Review found that the provision of an FSG contributes to the time, cost and volume of documents that are required to be prepared by advice providers without providing a significant benefit to clients. FSGs are not tailored to each client and the content does not change based on the content of the advice. The Review concluded that what is important is that the information is available and accessible to the client at the time personal advice is provided.

1.203 Recommendation 10 is that providers of personal advice should have the flexibility to decide how they disclose the information that is otherwise required to be in an FSG to their clients.

Flexibility in providing an FSG

1.204 Part 3 of Schedule 1 to the Bill amends Part 7.7 of the Corporations Act to deliver recommendation 10 of the Review, while also extending the new regime to providers of general advice. It inserts new Division 2A in Part 7.7, which provides a new website disclosure option as an alternative to providing an FSG to a retail client. As the FSG regime in Part 7.7 applies where an AFS licensee or its authorised representative provides general advice to a retail client, as well as personal advice – and in many cases, general advice precedes personal advice, the new website disclosure option will be available for all financial product advice, which as per section 766B of the Corporations Act, is defined to cover both general and personal advice. This approach provides consistency with the FSG regime, and fully realises the benefits of giving providers the flexibility to decide how they disclose information that is otherwise required to be in an FSG.
[Schedule 1, item 32, Division 2A of Part 7.7 of the Corporations Act]

1.205 An AFS licensee or an authorised representative of one or more AFS licensees, when providing financial product advice, can choose whether to continue providing an FSG (in accordance with Division 2 of Part 7.7) or alternatively to make the FSG information available on their website as 'website disclosure information' (in accordance with new Division 2A of Part 7.7).

1.206 Website disclosure information means the same statements and information that would be required to be in an FSG provided by the respective entity under sections 942B and 942C of the Corporations Act. If the FSG requirements in sections 942B and 942C are subject to any modifications or exclusions – for example, if additional FSG requirements are prescribed under the existing regulation-making power in section 951C or under the existing instrument-making power in section 951B – those modified FSG requirements also apply to website disclosure information. This approach ensures that a client accessing the information through a provider's website has access to the same information as if they had been given an FSG.
[Schedule 1, items 28 and 32, sections 9 and 943J of the Corporations Act]

1.207 The website disclosure information can appear across different locations or parts of the provider's website; it is not necessary for the information to be co-located on the website. This is consistent with the approach of section 942D of the Corporations Act, which provides that an FSG may consist of multiple documents. Website disclosure information can also take any form, for example it could be written or graphic information on a webpage (or webpages) of the website, be in a portable document file or files, or be made available in other forms or formats. However, where a certain use of wording

or phrase is required for an FSG under sections 942B and 942C of the Corporations Act, the website disclosure information must use that wording or phrase.

1.208 To rely on the alternative option of providing website disclosure information, certain requirements must be met by the financial service provider:

- the financial service provided to the client is financial product advice; and
- by the time an FSG would have been required to be given to the client, the provider has not given the client an FSG (or something purporting to be it) but has made website disclosure information (or something purporting to be it) available on their website. The references to something purporting to be an FSG or website disclosure information caters for deficient or otherwise defective material, for instance where some but not all of the required information is included.

[Schedule 1, item 30, subsection 941C(5A) of the Corporations Act]

1.209 Similarly, in circumstances where the financial service provider is subsequently required to give a retail client an updated FSG or supplementary FSG, the financial service provider may alternatively make website disclosure information available on their website in accordance with the obligations of Division 2A.
[Schedule 1, item 31, section 941F of the Corporations Act]

1.210 This approach gives providers of financial product advice flexibility to decide how they disclose information that is otherwise required to be in an FSG to their clients, to both ensure the information is readily accessible by consumers when they need it and reduce regulatory burden on providers.

Obligations relating to website disclosure information

New Division 2A

1.211 If an AFS licensee or its authorised representative chooses to fulfil its FSG obligations under Part 7.7 of the Corporations Act by providing website disclosure information, the provider is subject to obligations in Division 2A of the Act relating to making that information available.
[Schedule 1, item 32, subsections 943G(1) and (2) and subsections 943H(1) to (3) of the Corporations Act]

1.212 These obligations, which are set out in more detail below, relate to:

- authorised distribution of website disclosure information;
- website disclosure information being readily accessible;
- website disclosure information being up to date; and
- alteration of website disclosure information.

1.213 Failure to meet an obligation in new Division 2A of Part 7.7 of the Corporations Act could incur a penalty. These penalties are consistent with the existing penalties for failure to meet an obligation in Division 2.

1.214 Failure to give an FSG to a retail client – in contravention of existing subsections 941A(3) (for an AFS licensee) and 941B(4) (for an authorised representative of an AFS licensee) – is subject to the standard civil penalties under section 1317G of the Corporations Act. Similarly, failure to make website disclosure information available – in contravention of new subsections 943G(3) (for an AFS licensee) and 943H(4) (for an authorised representative of an AFS licensee) – is also subject to the standard civil penalties under section 1317G of the Corporations Act. However, to ensure a proportionate approach, the person is not liable to more than one pecuniary penalty in relation to the same conduct.
[Schedule 1, items 32 and 80, subsections 943G(3) to (5), 943H(4) to (6) and 1317E(3) of the Corporations Act]

1.215 An authorised representative of an AFS licensee must have authorisation from the licensee to distribute website disclosure information. Failure to comply with this obligation is subject to the standard civil penalties under section 1317G of the Corporations Act. This is consistent with existing requirements for an FSG in section 941B of the Corporations Act.
[Schedule 1, items 32 and 80, subsections 943H(3) and (4) and 1317E(3) of the Corporations Act]

1.216 The website disclosure information (or something purporting to be website disclosure information) must be readily accessible to the public on the provider's website. For example, the website disclosure information should not be password protected or accessible only to persons who have created an account or have a paid subscription. While other information on the provider's website could have more limited access, the website disclosure information must be freely available. Failure to comply with this obligation is subject to the standard civil penalties under section 1317G of the Corporations Act.
[Schedule 1, items 32 and 80, section 943K and subsection 1317E(3) of the Corporations Act]

1.217 The website disclosure information must be kept up to date and specify the day on which it was prepared or last updated. Failure to comply with this obligation is subject to the standard civil penalties under section 1317G of the Corporations Act. This is consistent with existing requirements for an FSG to be dated, in subsections 942B(5) and 942C(5) of the Corporations Act. The requirement for website disclosure information being up to date includes circumstances where changes to section 942B or 942C require particular information to be included that was not previously required to be included in the website disclosure information. These requirements provide confidence and visibility to clients about whether the website disclosure information is up to date, and ensure providers maintain and update the information.

[Schedule 1, items 32 and 80, section 943L and subsection 1317E(3) of the Corporations Act]

1.218 Alteration of website disclosure information must be authorised by the relevant AFS licensee, namely the AFS licensee the information relates to or the AFS licensee or each of the AFS licensees who authorised the distribution of that information. This is consistent with the existing requirements for an FSG in section 942E of the Corporations Act.
[Schedule 1, item 32, paragraph 943M(a) of the Corporations Act]

1.219 If the alteration is a material alteration, the website must clearly show the date on which that alteration was made. This ensures that important changes are recorded, and readily accessible to clients to inform their financial decisions.
[Schedule 1, item 32, paragraph 943M(b) of the Corporations Act]

1.220 Unauthorised alteration of website disclosure information or failing to record the date of a material alteration to website disclosure information is an offence. The existing penalty of two years imprisonment which applies to this offence in relation to unauthorised alteration of FSGs (under section 942E of the Corporations Act) will also apply in relation to unauthorised alteration of website disclosure information. This ensures the AFS licensee retains control over important product and service information. This offence is more serious than the civil penalties for failing to ensure that website disclosure information is readily available and up to date, so as to be proportionate to the harm the offence is designed to mitigate.
[Schedule 1, items 32 and 81, section 943M and Schedule 3 of the Corporations Act]

Enforcement of disclosure obligations

1.221 Division 7 of Part 7.7 of the Corporations Act deals with enforcement of disclosure obligations (although some offences and civil penalties relating to FSGs are located elsewhere in Part 7.7, as outlined above).

1.222 Generally, financial service providers should be subject to the same sanctions for failing to comply with their disclosure obligations, irrespective of whether they choose to provide that disclosure via an FSG or the new website disclosure option. To that end, the existing penalties and offences which currently apply to AFS licensees and their authorised representatives in relation to FSGs are amended, as appropriate, to also apply in relation to website disclosure information. No changes are made to the current level of penalties and offences – that is, the same penalties and/or offences continue to apply for failing to comply with the existing disclosure obligations, irrespective of whether that failure relates to FSGs or website disclosure information.

FSGs and website disclosure information must not be defective

1.223 The meanings of ‘defective’ and ‘disclosure document or statement’ are amended to cover website disclosure information. ‘Disclosure document or

statement' can now mean website disclosure information, and continues to cover an FSG and other specified materials. The meaning of 'defective', in relation to a disclosure document or statement, now includes where there is a misleading or deceptive statement in website disclosure information, and where there is an omission of information that is required to be included in website disclosure information.
[Schedule 1, items 33 to 35 and 68 to 70, sections 952B and 953A of the Corporations Act]

1.224 For the avoidance of doubt in applying the definition of defective, if particular information included in the website disclosure information is not up to date, that particular information constitutes a misleading statement in the website disclosure material. If, however, particular information is not included in the website disclosure information where that particular information was not previously required to be included (for example, if regulations prescribe additional information required for FSGs and that additional information has not yet been made available in the website disclosure information), the failure to include the newly required information is an omission from the website disclosure information. This is consistent with the existing avoidance of doubt provision for FSGs at subsection 952B(1A) of the Corporations Act.
[Schedule 1, items 36 and 71, subsections 952B(1B) and 953A(1B) of the Corporations Act]

1.225 An AFS licensee or authorised representative of an AFS licensee must not provide an FSG, or make website disclosure information available, knowing it to be defective. It is an offence if the providing entity is required to provide an FSG and does so by making website disclosure information available, or makes website disclosure information available reckless as to whether a person will or may rely on that information, while knowing the website disclosure information is defective. The existing penalty of 15 years imprisonment which applies to this offence in relation to knowingly providing defective FSGs will also apply in relation to knowingly making available defective website disclosure information.
[Schedule 1, items 37 to 42, section 952D of the Corporations Act]

1.226 It is also an offence for an AFS licensee to provide a defective FSG or make defective website disclosure information available, whether or not the provider knew it was defective. Specifically, it is an offence if the AFS licensee is required to provide an FSG and does so by making website disclosure information available, or makes website disclosure information available reckless as to whether a person will or may rely on that information, and the website disclosure information is defective. This is an existing strict liability offence, which means the fact the FSG or website disclosure information is defective is sufficient to establish the offence. However, a person is not liable for this strict liability offence if they took reasonable steps to ensure that the FSG or website disclosure information would not be defective. The existing penalty of two years imprisonment which applies to this offence in relation to

defective FSGs will also apply in relation to defective website disclosure information.
[Schedule 1, items 43 to 45, subsections 952E(1), (6) and (7) of the Corporations Act]

1.227 An AFS licensee commits an offence if it knowingly provides a defective FSG or defective website disclosure information to an authorised representative of the licensee and authorises its distribution. The existing penalty of 15 years imprisonment which applies to this offence in relation to knowingly providing defective FSGs will also apply in relation to knowingly making available defective website disclosure information.
[Schedule 1, item 46, paragraph 952F(1)(a) and subsection 952F(2) of the Corporations Act]

1.228 It is also an offence for an AFS licensee to provide a defective FSG or defective website disclosure information to its authorised representative, or to authorise its distribution, whether or not the provider knew it was defective. Given that an authorised representative may be authorised by multiple AFS licensee, an AFS licensee is only liable for this offence to the extent that the defective FSG or website disclosure information relates to that AFS licensee. This is an existing strict liability offence, which means the fact the FSG or website disclosure information is defective is sufficient to establish the offence. However, a person is not liable for this strict liability offence if they took reasonable steps to ensure that the FSG or website disclosure information would not be defective. The existing penalty of two years imprisonment which applies to this offence in relation to defective FSGs will also apply in relation to defective website disclosure information.
[Schedule 1, item 47, paragraph 952G(1)(a) and subsections 952G(2) and (3) of the Corporations Act]

1.229 An AFS licensee commits an offence, and is also liable for a civil penalty, if the licensee does not take reasonable steps to ensure that an authorised representative of the licensee complies with their obligations to provide an FSG to the client or make available website disclosure information as and when required, and ensure that the authorised representative does not, in purported compliance with their obligations, make available website disclosure information that is defective. The existing penalties – five years imprisonment (offence penalty) and 5,000 penalty units (civil penalty) – which apply to this obligation in relation to FSGs will also apply in relation to website disclosure information.
[Schedule 1, items 48 and 49, subsections 952H(1) and (2) of the Corporations Act]

1.230 An AFS licensee commits an offence where it provides an FSG or makes available website disclosure information, reckless as to whether a person will or may rely on that information, or authorises the distribution of website disclosure information by an authorised representative of the licensee, and the website disclosure information does not comply with the requirements to be

kept up to date or specify the day on which it was prepared or last updated, including where an alteration that is a material alteration has been made. This is an existing strict liability offence which means the fact the FSG or website disclosure information does not comply with the requirements is sufficient to establish the offence. The existing penalty of 30 penalty units which applies to this offence in relation to out of date FSGs will also apply in relation to out of date website disclosure information.
[Schedule 1, items 50 to 52 and 82, section 952I (heading), subsections 952I(4A), (4B) and (5) and Schedule 3 of the Corporations Act]

FSGs and website disclosure information must be authorised by the AFS licensee

1.231 It is an offence for an authorised representative of an AFS licensee to provide an FSG or make website disclosure information available, where the licensee has not authorised its distribution. Specifically, it is an offence if the authorised representative is required to provide an FSG and does so by making website disclosure information available, or makes website disclosure information available reckless that a person will or may rely on that information, and the AFS licensee has not authorised the distribution of the website disclosure information by the representative. The existing penalty of five years imprisonment which applies to this offence in relation to unauthorised FSGs will also apply in relation to unauthorised website disclosure information.
[Schedule 1, items 53 to 56, section 952K (heading), subparagraphs 952K(a)(ii), (iii) and (iv) and paragraph 952K(b) of the Corporations Act]

1.232 An AFS licensee must take appropriate action to rectify a defective FSG or defective website disclosure information that it is aware has been distributed by its authorised representative. Specifically, an AFS licensee commits an offence if, on becoming aware the website disclosure information it has authorised its representative to distribute is defective, the licensee does not as soon as practicable give the representative a direction to alter the website disclosure information in a way that corrects the deficiency and that complies with section 943M (being that alterations to the website disclosure information are authorised and the date of a material update to the website disclosure information is included on the provider's website). The existing penalty of 15 years imprisonment which applies to this offence in relation to defective FSGs will also apply in relation to defective website disclosure information.
[Schedule 1, items 57 to 60, section 952L (heading), paragraphs 952L(1)(a) and (b) and subparagraph 952L(1)(c)(iv) of the Corporations Act]

1.233 Subsequently, the existing offence in subsection 952L(2) of the Corporations Act for an authorised representative failing to comply with a direction given by the AFS licensee under subsection 952L(1) of that Act will apply when a representative is given a direction to alter the website disclosure information in a way that corrects the deficiency and that complies with section 943M, and

the representative does not comply with the direction. The existing penalty of five years imprisonment continues to apply for failure to comply with such a direction.

1.234 An authorised representative of an AFS licensee also commits an offence if the authorised representative becomes aware that website disclosure information it has been authorised to distribute by the AFS licensee is defective and the representative does not as soon as practicable notify the licensee of the particulars of the deficiency. The existing penalty of five years imprisonment which applies to this offence in relation to defective FSGs will also apply in relation to defective website disclosure information.
[Schedule 1, items 61 and 62, paragraphs 952L(3)(a) and (b) of the Corporations Act]

1.235 For the purposes of section 952L of the Corporations Act, a reference to an AFS licensee or an authorised representative distributing an FSG or website disclosure information includes the AFS licensee or authorised representative giving, reading or making available the document or statement to another person.
[Schedule 1, item 63, subsection 952L(4) of the Corporations Act]

1.236 It is an offence for any person to provide an altered FSG or make available, on its website, altered website disclosure information which results in the FSG or website disclosure information becoming defective (or more defective than it previously was) without the authority of the AFS licensee who has prepared and authorised its distribution. The existing penalty of five years imprisonment which applies to this offence in relation to defective FSGs will also apply in relation to defective website disclosure information.
[Schedule 1, items 64 to 67, section 952M (heading) and paragraphs 952M(a), (b) and (d) of the Corporations Act]

1.237 An AFS licensee or an authorised representative of an AFS licensee who makes website disclosure information available must comply with a request to give a client a record of further market-related advice or advice to which subsection 946B(7) applies (that being advice that does not recommend the purchase or sale of products), where the advice has been provided but not a record of that advice. An AFS licensee or authorised representative commits an offence if it fails to comply with the request. This is consistent with the existing requirements for a providing entity of an FSG in sections 942B(8) and 942C(8) of the Corporations Act. The existing penalty of one year imprisonment which applies to this offence in relation to FSGs will also apply in relation to website disclosure information.
[Schedule 1, item 32 and 81, section 943N and Schedule 3 of the Corporations Act]

1.238 The existing offence of failing to give a disclosure document or statement, in section 952C of the Corporations Act, does not apply in relation to website disclosure information, which is *made available* rather than *given* to clients. If a providing entity makes available website disclosure information, or

something purporting to be website disclosure information, new subsection 941C(5A) provides that the providing entity does not have to give the client an FSG, and subsequently the obligations on the providing entity in relation to giving an FSG no longer apply. However, if a providing entity is required to give an FSG but neither gives, or purports to give an FSG, nor makes available website disclosure information, or something purporting to be website disclosure information, the providing entity is likely to be in contravention of the obligation in section 952C.

1.239 These amendments leverage the existing penalties, offences and defences which apply in relation to FSGs, without changing the nature or quantum of sanctions. This is an appropriate approach, as providing website disclosure information is a means of satisfying existing obligations to provide an FSG. The new offences in section 943M (relating to unauthorised alteration of website disclosure material) and section 952I (relating to making deficient website disclosure material available) are similarly designed to align with and fit into the existing enforcement regime for FSGs, and have been set in accordance with the Australian Government Guide to Commonwealth Offences. The penalties and offences are proportionate to the aim of deterring noncompliance and ensuring clients have access to information needed to inform their decisions.

Civil liability for loss or damage

1.240 Section 953B of the Corporations Act lists the situations where people may take civil action for loss or damage for contraventions of provisions of Part 7.7 of the Corporations Act. Part 3 of Schedule 1 to this Bill amends section 953B to ensure it continues to apply whether the financial service provider chooses to provide an FSG or website disclosure information.

1.241 Generally, an AFS licensee will be liable for the loss or damage a person suffers as a result of the licensee or an authorised representative of the licensee making available website disclosure information that is defective, or making available defective website disclosure information reckless as to whether a person will or may rely on that information. This reflects the fact that it is ultimately the AFS licensee that is accountable for information that is provided by one of its authorised representatives and ensures that clients will always have an AFS licensee to take action against for loss or damage. Where one or more AFS licensees are potentially liable, section 917C is used to determine which licensee or licensees jointly are liable.
[Schedule 1, items 72 to 76, subparagraphs 953B(1)(a)(i) and 953B(1)(b)(i), paragraphs 953B(1)(ba), (2)(b) and (3)(a) to (c) of the Corporations Act]

1.242 However, where a person alters the website disclosure information that results in the website disclosure information being defective or more defective than it would otherwise have been without the authority of the AFS licensee, then the person who made the alteration will be liable for the loss or damage a person suffers because of the alteration.

[Schedule 1, items 77 and 78, paragraphs 953B(4)(a) and (b) of the Corporations Act]

1.243 An AFS licensee will also not be liable where the AFS licensee took reasonable steps to ensure that the website disclosure information that was defective would not be defective.
[Schedule 1, item 79, subsection 953B(6) of the Corporations Act]

Other Amendments

1.244 Section 923A of the Corporations Act provides that it is an offence for a person who carries on a financial services business or provides a financial service, or if another person does so on their behalf, to assume or use restricted words or expressions. Explanatory note 3 to subsection 923A(1) is amended to add a reference to website disclosure information. The amended note clarifies that an FSG or website disclosure information may need to include a statement relating to the restriction in accordance with the FSG information requirements in sections 942B and 942C of the Corporations Act.
[Schedule 1, item 29, note 3 to subsection 923A(1) of the Corporations Act]

Commencement, application and transitional provisions

1.245 The amendments made by Part 3 of Schedule 1 to this Bill will commence the day after the Bill receives Royal Assent. If a provider chooses to make the website disclosure information available on their website, it is likely they will need time to change and update their website. However, given the option to make the website disclosure information available on a website is an alternative option to the current FSG requirements, the amendments can apply from commencement. This will have limited impact on industry given providers can transition to the website option if and when they are ready to do so.
[Section 2 of the Bill, table item 4]

Part 4 - Conflicted remuneration

Recommendations 13.1, 13.2 and 13.3 – Monetary and non-monetary benefits from the client

1.246 Part 4 of Schedule 1 to the Bill:

- Implements recommendations 13.1 and 13.3 of the Review by amending the Corporations Act to clarify that monetary and non-monetary benefits given by a retail client are not conflicted remuneration and to remove associated exceptions to the ban on conflicted remuneration.

- Implements recommendation 13.2 of the Review by amending the Corporations Act to provide that it is not conflicted remuneration for a superannuation trustee to pay an AFS licensee or its authorised representative a fee for personal advice that relates to a member's interest in the fund.

Current law and the Review

Recommendation 13.1 – Benefits given by clients

Recommendation 13.1: Benefits given by a client

Amend the conflicted remuneration provisions in the Corporations Act to explicitly provide that both monetary and non-monetary benefits given by a client to an AFS licensee or a representative of a licensee are not conflicted remuneration.

This means that the prohibition on AFS licensees, or their representatives accepting monetary and non-monetary benefits would only apply to benefits given by a product issuer, not to benefits given by a client.

The objective of this recommendation is to clarify the law by giving effect to the intended outcome of the conflicted remuneration provisions (to ban benefits given by a product issuer), which would remove the need for unnecessary exceptions.

1.247 Division 4 of Part 7.7A of the Corporations Act relates to conflicted remuneration. Of particular note, Subdivision B contains provisions about the meaning of conflicted remuneration, and exceptions to this definition, while provisions in Subdivision C prohibit certain entities from giving or accepting conflicted remuneration.

1.248 Section 963A of the Corporations Act provides that conflicted remuneration is a benefit (monetary or non-monetary) that could reasonably be expected to influence the choice of financial product recommended, or the financial product advice given, by an AFS licensee or an authorised representative of a licensee to a retail client.

1.249 Section 963K of the Corporations Act prohibits the issuer or seller of a financial product from giving conflicted remuneration to an AFS licensee or an authorised representative of a licensee. Subsections 963E(1) and 963G(1) and section 963H also prohibit an AFS licensee or an authorised representative of a licensee accepting conflicted remuneration. Sections 963B and 963C set out monetary and non-monetary benefits that are excluded from the definition of conflicted remuneration.

1.250 One excluded circumstance, as provided by paragraph 963B(1)(d) of the Corporations Act, is where the benefit is given to an AFS licensee or its authorised representative by a retail client in relation to the issue or sale of a financial product or financial product advice given by the licensee or authorised representative to the client.

Recommendation 13.2 ‑ Client directed payments from superannuation funds

Recommendation 13.2: Client directed payments from superannuation funds

Remove the exception in section 963B(1)(d)(ii) and 963C(1)(e)(ii) of the Corporations Act and replace it with a specific exception that permits a superannuation fund trustee to pay an AFS licensee or its representative a fee for personal advice where the client directs the trustee to pay the advice fee from their superannuation account.

The objective of this recommendation is to enable clients to authorise the payment of an advice fee from their superannuation account, where it relates to their interest in the fund.

1.251 Recommendation 7 of the Review clarifies the legal basis for superannuation trustees to charge individual members for financial advice from their superannuation account. It is implemented in Part 1 of this Schedule.

1.252 The reforms to address recommendation 13.2 interact with those addressing recommendation 7. The reforms to address recommendation 13.2 revise existing exceptions to the ban on conflicted remuneration in the Corporations Act to enable clients to authorise the payment of an advice fee from their superannuation account as the recommendation 7 reforms permit and it not be conflicted remuneration.

Recommendation 13.3 ‑ Removing exceptions for benefits given by clients for issue, sales or dealings in financial products

Recommendation 13.3: Removing exceptions for benefits given by clients for issue, sales or dealings in financial products

If the recommendation that permits benefits (monetary and non-monetary) given by clients to an AFS licensee or a representative is accepted, the following exceptions to the conflicted remuneration provisions are no longer required and should be removed:

• section 963B(1)(d)(i) of the Corporations Act – monetary benefits given by the client for the issue or sale of a financial product;

• section 963C(1)(e)(i) of the Corporations Act – non-monetary benefits given by the client for the issue or sale of a financial product; and

• regulation 7.7A.12E of the Corporations Regulations – monetary benefits given to the provider by a retail client in relation to the provider dealing in a financial product on behalf of the client.

The objective of this recommendation is to remove what are likely now redundant exceptions and which will not be required if the conflicted remuneration provisions in the Corporations Act are amended as recommended to clarify that both monetary and non-monetary benefits given by a client to an AFS licensee or a representative of the licensee are not conflicted remuneration.

1.253 Recommendation 13.3 of the Review is that, provided recommendation 13.1 of the Review is implemented, then exceptions that apply to benefits given by a

retail client to an AFS licensee or an authorised representative of the licensee can be repealed.

1.254 The Review concluded that these exceptions would be unnecessary once the definition of conflicted remuneration is amended.

Clarifying rules on conflicted remuneration

Definition of conflicted remuneration

1.255 Part 4 of Schedule 1 amends Subdivision B of Division 4 of Part 7.7A of the Corporations Act to address recommendation 13.1 of the Review. The current definition of conflicted remuneration is repealed and replaced with a new definition, to ensure that monetary and non-monetary benefits given by a retail client are not conflicted remuneration.

1.256 The new definition builds on the former one, so that conflicted remuneration means:

- any benefit (monetary or not) that is given to an AFS licensee or an authorised representative of an AFS licensee, who provides financial product advice to retail clients; and
- that because of the benefit, could reasonably be expected to influence the recommendation or the advice given by the licensee or authorised representative to the retail client;
- but the benefit is not given by a retail client (or on their behalf) to the licensee or authorised representative in relation to financial product or service provided by the licensee or authorised representative.

[Schedule 1, item 84, section 963A of the Corporations Act]

1.257 The new definition also clarifies that a reference to giving a benefit in Subdivision B includes causing or authorising the benefit to be given. For example, person A, a retail client, intends to give a monetary benefit to person B, the licensee, and authorises person C, the product issuer, to make a payment of the intended amount to person B on person A's behalf. In such situations, the benefit being given must be something that the retail client has a right to or in, for instance money in their account, property, or a direct or beneficial interest in a financial product. This removes the ambiguity of the previous approach in which an explanatory note provided that due to the definition of 'doing' in section 9 of the Corporations Act, that a reference to giving a benefit includes a reference to causing or authorising it to be given. ***[Schedule 1, item 84, paragraph 963A(1)(b) and subsection 963A(2) of the Corporations Act]***

1.258 Therefore, to ensure a benefit given by a retail client to an AFS licensee or its authorised representative will not be conflicted remuneration, the benefit must be given in the following circumstances:

- The benefit is given directly by a retail client or a retail client causes or authorises another party to give the benefit on their behalf.
- The benefit is given by a retail client, or on behalf of the client, including from one or more financial products in which the retail client has rights or benefits. This can include, for example, where a benefit is paid out of a premium paid by a client.

[Schedule 1, item 84, paragraph 963A(1)(b) and subsection 963A(2) of the Corporations Act]

1.259 For clarity, a benefit is not given by a retail client if the benefit is provided at the instruction of the product issuer or seller.

1.260 This amendment seeks to achieve the intended outcome of the conflicted remuneration provisions, to ban benefits given by a product issuer or seller rather than by a retail client. As discussed below, it also removes the need for unnecessary exceptions.

Exceptions to conflicted remuneration – repeal redundant exceptions

1.261 The new definition of conflicted remuneration results in consequential amendments and the repeal of provisions it replaces, which otherwise provided an exception to the ban on conflicted remuneration where a monetary benefit is given to an AFS licensee or its authorised representative by a retail client for the issue or sale of a financial product or financial product advice.
[Schedule 1, items 87 to 90, paragraph 963B(1)(d) and notes to paragraph 963B(1)(e) and subsection 963B(5)]

Exceptions to conflicted remuneration – new

1.262 Part 4 of Schedule 1 amends section 963B to address recommendation 13.2 of the Review by providing that a benefit is not conflicted remuneration where it is:

- given to the AFS licensee or an authorised representative of a licensee by a trustee or trustees of a regulated superannuation fund;
- given in relation to financial product advice that is personal advice, which is provided by the licensee or authorised representative to a retail client, about the client's interest in the fund; and
- charged against the client's interest in the fund, or against the interests of the client and other members of the fund.

[Schedule 1, item 85, paragraph 963B(1)(bb) of the Corporations Act]

1.263 This exception complements the amendments to section 99FA of the SIS Act and the new deduction in section 295-490 of the ITAA 1997 made by Part 1 of Schedule 1 to the Bill. It clarifies that a trustee of a regulated superannuation fund can give a benefit to an AFS licensee or authorised representative and it will not be conflicted remuneration if the benefit is in relation to financial

product advice about the client's interest in the fund and charged against the client's interest in the fund (either individually or collectively). This clarification supports the objective to provide superannuation trustees with more certainty about paying advice fees agreed between a client and their advice provider from the client's superannuation account. Any benefits charged against the clients' interest in the fund should still comply with the relevant obligations under the SIS Act and the ITAA 1997.

1.264 A 'regulated superannuation fund' is one that complies with subsections 19(2) to (4) of the SIS Act.

Recommendations 13.4 and 13.5 – Repeal of exceptions to conflicted remuneration

1.265 Part 4 of Schedule 1 to the Bill:

- Implements recommendation 13.4 of the Review by amending the Corporations Act to remove the conflicted remuneration exception for monetary benefits given for the issue or sale of a financial product where financial product advice about the product has not been provided in the previous 12 months.
- Implements recommendation 13.5 of the Review by amending the Corporations Act to remove the exceptions to conflicted remuneration for agents or employees of Australian ADIs.

Current law and the Review

Recommendation 13.4 – Removing the exception where advice has not been provided in previous 12 months

Recommendation 13.4: Removing the exception for the issue of financial products where advice has not been provided in the previous 12 months

Remove the exception in paragraph 963B(1)(c) of the Corporations Act, which provides for monetary benefits given for the issue or sale of a financial product where the AFS licensee or representative has not given financial product advice about the product (or class of product) for at least 12 months prior to the date the benefit is given.

The objective of this recommendation is to ensure the consistent operation of the conflicted remuneration provisions by providing that a benefit is conflicted remuneration (and therefore banned) if it could reasonably influence the financial product advice regardless of the length of time that has passed between when the financial product advice is provided and the benefit for the issue of a financial product is given.

1.266 Paragraph 963B(1)(c) of the Corporations Act currently provides an exception to conflicted remuneration for a benefit given for the issue or sale of a financial product to a retail client where the AFS licensee or an authorised representative

of a licensee has not provided financial product advice about the product (or that class of product) to the client in the 12 months before the benefit is given. The Review found that this exception should be removed.

Recommendation 13.5 – Exception for agents or employees of Australian authorised deposit-taking institutions

Recommendation 13.5: Exception for agents or employees of Australian authorised deposit-taking institutions

Remove the exceptions in section 963D of the Corporations Act and regulation 7.7A.12H of the Corporations Regulations for benefits given to an agent or employee of an Australian authorised deposit-taking institution for financial product advice about basic banking products, general insurance products or consumer credit insurance.

The objective of this recommendation is to ensure the consistent operation of the conflicted remuneration provisions by placing agents and employees of Australian ADIs in the same position as employees of other financial institutions.

1.267 Section 963J of the Corporations Act prohibits an employer of an AFS licensee or an authorised representative of a licensee from giving conflicted remuneration to the licensee or authorised representative for work they carried out as an employee of that employer. However, section 963D provides an exception to this prohibition for benefits given by an Australian ADI to a licensee or authorised representative for recommending a basic banking product, general insurance product or consumer credit insurance. The exception permits employees of an ADI to receive sales incentives from their ADI employer, including volume or sales-based incentives.

1.268 The Review found that the exception should be removed on the basis that employees of ADIs should not be treated differently to employees of other financial institutions. The removal of the exception is not intended to prevent ADIs from providing their employees with performance related benefits and incentives under a balanced scorecard approach that includes a broad range of criteria.

Clarifying exceptions to conflicted remuneration

1.269 Part 4 of Schedule 1 repeals the exception in paragraph 963B(1)(c) of the Corporations Act. This is consistent with recommendation 13.4 of the Review, that the conflicted remuneration provisions should apply consistently where a benefit could reasonably influence the financial product advice regardless of the length of time that has passed since the advice was provided.
[Schedule 1, item 86, paragraph 963B(1)(c) of the Corporations Act]

1.270 The current exception at section 963D of the Corporations Act is also repealed. This is consistent with recommendation 13.5 of the Review, that the conflicted remuneration provisions should operate consistently by placing agents and

employees of Australian ADIs in the same position as employees of other financial institutions.
[Schedule 1, item 91, section 963D of the Corporations Act]

Commencement, application and transitional provisions

1.271 The amendments made by Part 4 of Schedule 1 to this Bill commence immediately after the commencement of the amendments in Part 3. The amendments made by Part 3 of Schedule 1 to this Bill will commence the day after the Bill receives Royal Assent.

1.272 All amendments made by Part 4 of Schedule 1 to this Bill, except the repeal of section 963D (which repeals the exception for agents or employees of Australian ADIs), apply to a benefit given on or after commencement.
[Schedule 1, item 92, section 1708C of the Corporations Act]

1.273 The repeal of section 963D applies to a benefit given to an AFS licensee, or an authorised representative of an AFS licensee, under an arrangement that was entered into, or varied, on or after the "deferred start day", which occurs 6 months after the commencement of Part 4 of Schedule 1 to this Bill. For the repeal to apply to an arrangement that was varied, the variation of the arrangement must relate to the giving of benefits under the arrangement.
[Schedule 1, item 92, subsection 1708D(1) of the Corporations Act]

1.274 The repeal of section 963D also applies to benefits given to an AFS licensee, or an authorised representative of an AFS licensee, on or after the deferred start day, where that benefit is not given under an arrangement. This accounts for circumstances in which a benefit is not given under a formal arrangement to cover all circumstances, as, while it is likely a benefit would be given under an arrangement, section 963D does not impose a condition that benefits must be given under a formal arrangement.
[Schedule 1, item 92, subsection 1708D(2) of the Corporations Act]

1.275 The application provision relating to ADI employee benefits reflects the possible existence of employment contracts with remuneration based on volume of sales bonuses that rely on the exception currently in section 963D, or other existing contractual arrangements that relate to monetary or nonmonetary benefits permitted under section 963D. It is not the intention of this measure to extinguish existing benefits, rights or entitlements on commencement; it will apply to arrangements entered into on or after commencement of these provisions. Further, the 6-month transitional period allows ADIs time to adjust existing remuneration structures before the commencement of the repeal of section 963D.

Part 5 - Standard consent requirements for certain insurance commissions

Recommendations 13.7, 13.8 and 13.9 – consent for certain insurance commissions

1.276 Part 5 of this Schedule to the Bill:

- Implements recommendations 13.7, 13.8 and 13.9 of the Review by amending the Corporations Act to provide that a person who provides personal advice to a retail client about a life risk insurance product, general insurance product or consumer credit insurance and receives a commission in connection with the issue or sale of that product must obtain the client's informed consent before accepting the commission.

Current law

1.277 Paragraphs 963B(1)(a) to (ba) of the Corporations Act contain exceptions from the conflicted remuneration provisions for monetary benefits given to an AFS licensee or an authorised representative of a licensee for certain life risk insurance products, general insurance products and consumer credit insurance. This means that a person who provides financial product advice to retail clients in relation to those insurance products can receive commissions from their product issuers.

1.278 Life insurance cover is provided under a policy (a contract) issued by the life company to the policyholder for the provision of a benefit (the sum insured) on the death, total and permanent disablement, temporary disablement, or incidence of major illness of the life insured. General insurance covers a broad range of financial products, such as motor vehicle, home and contents and travel insurance. Consumer credit insurance provides insurance cover to consumers who have taken out a loan or hold a credit card. The insurance will generally meet minimum loan repayments if the consumer is unemployed, unable to work or dies. Consumer credit insurance covers the term of the product and is often financed by the loan or paid by the consumer.

1.279 For life insurance commissions, subsection 963BA(2) of the Corporations Act provides ASIC with the power to set maximum commission levels in a legislative instrument. Commissions are subject to a 'clawback' requirement which ASIC also determines by legislative instrument. These are currently prescribed in *ASIC Corporations (Life Insurance Commissions) Instrument 2017/510*.

1.280 Consumer credit insurance is usually sold through an intermediary as an addon insurance product. Intermediaries typically receive a commission, which is capped at 20 per cent as per section 145 of the National Credit Code.

The Review

Recommendation 13.7 – Consent for life insurance commissions

Recommendation 13.7: Life insurance

Retain the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a life risk insurance product. Commission and clawback rates should be maintained at the current levels (60 per cent upfront commissions and 20 per cent trailing commissions, with a 2-year clawback).

A person who provides personal advice to retail clients in relation to life risk insurance products, who receives a commission in connection with the issue or sale of the life risk insurance product, must obtain the client's informed consent before accepting a commission. This consent should be recorded in writing and should be obtained prior to the issue or sale of the life risk insurance product.

In order for the client to make an informed decision, the advice provider must disclose:

- the commission the person will receive (upfront commission and trail commission) as a per cent of the premium; and
- the nature of any services the adviser will provide to the client (if any) in relation to the life risk insurance product (such as claims assistance).

Consent will be one-off and apply for the duration of the policy.

This requirement will only apply to life risk insurance products purchased after the commencement of this recommendation.

The objective of this recommendation is to assist consumers to access personal advice about life insurance in order to obtain the type and amount of cover that meets their objectives, needs and circumstances. The intention is that the other recommendations will encourage more providers to offer to provide life insurance advice for a fee paid by the client and that over time commissions will play a lesser role in the distribution of life insurance.

1.281 The Review found that the current commission arrangements for life risk insurance products should be maintained. This includes maintaining the current arrangement for clawbacks.

1.282 However, the Review found that, while an advice provider has a duty to act in the best interests of the client about the advice provided, the prospect of receiving a commission creates a conflict for the provider.

1.283 Recommendation 13.7 recommended the law should address this conflict by requiring that an advice provider should obtain a retail client's informed consent before they accept a commission. The intention is that the consent requirement will support clients to understand how a provider's personal interest might influence the advice they are receiving on life risk insurance products.

Recommendation 13.8 – Consent for general insurance commissions

Recommendation 13.8: General insurance

Retain the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a general insurance product.

A person who provides personal advice to retail clients in relation to a general insurance product who receive a commission in connection with the issue or sale of the general insurance product, must obtain the client's informed consent before accepting a commission.

This consent should be recorded in writing and should be obtained prior to the issue or sale of the general insurance product. Consent is not required for any renewals of the same type of cover provided the client's original consent applied to the commission payable on any renewed cover.

The advice provider must disclose details of the commission the provider will receive for the issue or sale of the general insurance product (including for subsequent renewals) and any services the provider will provide to the client (if any). The disclosure of the commission amount can be set out in the form of a per cent range of the premium.

The objective of this recommendation is to assist consumers to continue to be able to access personal advice about general insurance products.

1.284 The Review recommended retaining the exception to the ban on conflicted remuneration for benefits given in connection with the issue or sale of a general insurance product.

1.285 However, similar to recommendation 13.7, recommendation 13.8 recommended that an advice provider must obtain a retail client's informed consent before accepting a commission. The client's consent would apply to the commission paid when the product is first issued and the commission paid on each subsequent renewal. The intention is that the consent requirement will support clients to understand how an advice provider's personal interest might influence the advice they are receiving on general insurance products.

Recommendation 13.9 – Consumer credit insurance commissions

Recommendation 13.9: Consumer credit insurance

Retain the exception to the ban on conflicted remuneration for benefits given in relation to consumer credit insurance. The current cap on commissions in relation to consumer credit insurance (of 20 per cent) should continue to apply.

A person who provides personal advice to retail clients in relation to consumer credit insurance who receives a commission in relation to consumer credit insurance must obtain the client's informed consent before accepting a commission.

The objective of this recommendation is to further improve the transparency of how consumer credit insurance is sold to consumers by requiring a person who provides

personal advice about consumer credit insurance to obtain their client's informed consent to receive a commission.

1.286 The Review recommended retaining the exception to the ban on conflicted remuneration for benefits given for consumer credit insurance. The Review also recommended the current cap of 20 per cent on commissions for consumer credit insurance should continue to apply.

1.287 However, similar to recommendations 13.7 and 13.8, the Review recommended that an advice provider must obtain the retail client's informed consent before accepting a commission for consumer credit insurance (recommendation 13.9).

Informed consent for life risk, general and consumer credit insurance commissions

1.288 Part 5 of Schedule 1 introduces new consent requirements to provide that a person who provides or is likely to provide personal advice to a retail client about a life risk insurance, general insurance or consumer credit insurance product must obtain the client's informed consent before accepting a monetary benefit such as a commission. If the client does not consent, then the person (or advice provider) can agree to provide the advice for a fee paid by the client, or they can decline to provide the advice.
[Schedule 1, items 93 to 96, subsection 963B(1) and section 963BB of the Corporations Act]

1.289 A commission is a fee paid by the life company for the sale of the life insurance. It is not a fee for services provided to the client. This means that if the services are promised but not provided, the client may be able to bring a complaint against the advice provider, but the life company will not have any obligation to turn off the commission or claim any part of it back from the advice provider.

1.290 The consent of the client must be obtained before the issue or sale of the relevant insurance product. This provides a genuine and real opportunity for the consumer to make an informed decision before deciding to be issued or sold a certain insurance product.
[Schedule 1, item 96, paragraph 963BB(1)(b) of the Corporations Act]

1.291 Before the client can consent, the following information must be disclosed to the client:

- the name of the insurer under the relevant product (if known);
- the rate of the monetary benefit, expressed according to the requirements for the type of product (explained further below);
- if more than one monetary benefit will be given in connection with the issue or sale of the relevant product, the frequency of giving those

monetary benefits and the period over which monetary benefits covered by the consent could be given, including any renewals;

- the nature of any services that the AFS licensee or authorised representative will provide the client in relation to the relevant product;
- a statement that it is a requirement of the law that client consent must be obtained before payment of an insurance commission; and
- the fact that the consent is irrevocable.

[Schedule 1, item 96, paragraph 963BB(1)(c) of the Corporations Act]

1.292 For a general insurance product, the rate of the monetary benefit disclosed must be expressed as a percentage range of the policy cost for the product, for example, 10 to 20 per cent of the premium.
[Schedule 1, item 96, subparagraph 963BB(1)(c)(ii) of the Corporations Act]

1.293 For a life risk insurance product or consumer credit insurance, the rate of the monetary benefit disclosed must be expressed as a percentage of the policy cost payable for the product.
[Schedule 1, item 96, subparagraph 963BB(1)(c)(iii) of the Corporations Act]

1.294 The consent is not required to specify the dollar amount of the commission the advice provider will receive.

1.295 Consent to the rate or frequency of the monetary benefit disclosed for a general insurance, life risk insurance or consumer credit insurance product is also taken to be consent to a rate or frequency that is less than that disclosed to the client. Therefore, consent for the variation of the rate or frequency is only required where the rate or frequency of the commission is increased relative to that already disclosed to the client. This reduces the administrative burden on the advice provider having to seek additional consent when the variation does not impact the provider's interests which have already been disclosed to the client and is unlikely to influence the client's decision to consent to the commission.
[Schedule 1, item 96, paragraph 963BB(2)(b) of the Corporations Act]

1.296 If the information required for informed consent under paragraph 963BB(1)(c) has already been disclosed to the client, it does not need to be disclosed again. This provision also reduces the administrative burden on licensees and authorised representatives of licensees, and could be relied on where the information has already been disclosed to the client through a different format, such as in a Statement of Advice. However, the licensee or authorised representative must ensure the disclosed information meets the requirements of paragraph 963BB(1)(c), including, for example, that the rate or range of the monetary benefit disclosed has been expressed correctly.
[Schedule 1, item 96, paragraph 963BB(2)(a) of the Corporations Act]

1.297 The AFS licensee or authorised representative must ensure that they have a written record of the client's consent. There is no requirement that consent be provided in writing, and there is no prescribed form for consent. The intention

is that the consent requirement not be onerous but instead instigate a conversation between the advice provider and the client. For example, a formal written agreement or an email that records a conversation where the consent was discussed would be sufficient written records of the consent for this requirement.
[Schedule 1, item 96, paragraph 963BB(1)(d) of the Corporations Act]

1.298 The AFS licensee or authorised representative must also give a copy of the written consent, or record of the consent, to the client as soon as reasonably practicable after the consent is obtained. This ensures there is transparency for both the AFS licensee or authorised representative and the client that consent has been provided.
[Schedule 1, item 96, paragraph 963BB(1)(e) of the Corporations Act]

1.299 To reduce administrative burden on licensees and clients and to support efficient practices, consent requirements are taken to be met in relation to renewal of general insurance products and in the event of a transfer of financial product advice business where certain conditions are met.

1.300 For general insurance products, it is common for providers to renew a client's cover on a yearly basis without necessarily meeting with the client before doing so. In these circumstances, it would be difficult to obtain the client's consent in advance of obtaining the renewal and there would be a real risk that the client could be left uninsured if the provider was in fact required to wait for that consent from the client.

1.301 To allow for this, the client's original consent will cover renewal of the general insurance product where the provider has explained to the client before the original consent was given that the provider would be paid a commission on each occasion that the insurance is renewed, and the rate of the commission received on each occasion that the insurance is renewed is equal to or less than that disclosed to the client before the original consent was given. New consent would be required without such an explanation, or if the rate of the commission increases above what was originally disclosed. This approach ensures transparency to the client where there is a change to the provider's interests that hasn't already been previously disclosed and mitigates the risk to clients described above.
[Schedule 1, item 96, subsection 963BB(3) of the Corporations Act]

1.302 The client's original consent will also continue in effect if the original AFS licensee or an authorised representative of a licensee sells or transfers their financial product advice business dealing with the client's life risk insurance, general insurance or consumer credit insurance product. This approach ensures that a client's consent does not become invalid merely as a result of a corporate restructure, and applies to complete and partial sales and transfers of business. This means, for example, new consent is not needed where the responsibility for managing a client's product changes as a result of the transfer of business:

- from one AFS licensee to another AFS licensee; and

- from one authorised representative to another authorised representative, where the second representative is authorised by either the same or different AFS licensee.

[Schedule 1, item 96, subsection 963BB(4) of the Corporations Act]

1.303 Consent may be varied. In particular, a client may consent to a proposal by the AFS licensee or its authorised representative to vary the name of the insurer, the rates and frequency of benefits, or the nature or services provided to the client in relation to the product. If the client consents to such a variation, the AFS licensee or authorised representative must ensure that they have the client's written consent or a copy of the client's written consent to the variations, or if the consent was not obtained in writing, a written record of the client's consent to the variations. The AFS licensee or authorised representative must also give a copy or record of the consent to the variations to the client. If the client does not consent to a variation, the original consent will continue to apply.
[Schedule 1, item 96, paragraphs 963BB(1)(d) and (e) and subsections 963BB(5) and (6) of the Corporations Act]

1.304 Section 963K of the Corporations Act prohibits an issuer or seller of a financial product from giving an AFS licensee or authorised representative conflicted remuneration. Part 5 of Schedule 1 amends section 963K to provide that where an issuer or seller of a life risk insurance, general insurance or consumer credit insurance product is deemed to have provided conflicted remuneration because the AFS licensee or authorised representative has failed to obtain the client's consent under new section 963BB, the issuer or seller does not contravene section 963K. This ensures that the obligation to seek the consent of the client under new section 963BB only applies to the AFS licensee or authorised representative, and that the issuer or seller of the certain insurance product is not liable for ensuring or checking that the AFS licensee or authorised representative has received informed consent from the client.
[Schedule 1, items 97 to 100, sections 963K and 1317E(3) of the Corporations Act]

Commencement, application and transitional provisions

1.305 The amendments made by Part 5 of Schedule 1 to this Bill will apply to benefits given in connection with the issue or sale of general insurance products, life risk insurance products or consumer credit insurance on or after the end of the period of 12 months beginning on the day this Bill receives the Royal Assent. This transition period will assist AFS licensees and authorised representatives to develop a workable approach to obtaining consent.
[Schedule 1, item 101, subsection 1708E(1) of the Corporations Act]

1.306 The amendments do not apply to benefits given in connection with the issue or sale of a general insurance product if the product is a renewal of a general insurance product, and that general insurance product was issued or sold before

the period of 12 months beginning on the day this Bill receives Royal Assent. This takes into account that for general insurance products, it is common for providers to renew a client's cover on an annual basis without necessarily meeting with the client before doing so. This reduces the risk that a client could be left uninsured if the provider was in fact required to wait for that consent from the client prior to renewal.

[Schedule 1, item 101, subsection 1708E(2) of the Corporations Act]

Chapter 2: Petroleum resource rent tax anti-avoidance rules

Table of Contents:

Outline of chapter

2.1 Schedule 2 to the Bill amends the anti-avoidance provisions in the PRRTA Act so that they are consistent with the general anti-avoidance rules (GAAR) in the ITAA 1936. The anti-avoidance provisions in the PRRTA Act prevents entities from using contrived and artificial arrangements to minimise or escape paying PRRT.

Context of amendments

2.2 On 7 May 2023, the Government announced its final response to the Treasury Gas Transfer Pricing Review. The reforms will mean that offshore LNG projects pay more tax, sooner, while ensuring Australia remains a reliable international energy supplier and investment partner.

2.3 Schedule 2 to the Bill implements Recommendation 9 of the Gas Transfer Pricing Review, which builds on Recommendation 12 of the PRRT Review undertaken by Michael Callaghan AM PSM in 2017.

2.4 This recommendation updates the PRRTA Act anti-avoidance provisions to be consistent with the ITAA 1936 GAAR. The GAAR was updated in 2013 to address weaknesses that were revealed due to a number of unfavourable court cases, where taxpayers successfully argued that a ‘tax benefit’ was not obtained on the basis that without the scheme, they would not have entered into an arrangement that attracted tax.

2.5 Corresponding amendments are made to the PRRTA Act to ensure the same argument cannot be used and to ensure consistency between the ITAA 1936 and the PRRTA Act.

2.6 The PRRTA Act anti-avoidance provisions apply to arrangements which artificially reduce assessable receipts or increase deductible expenditure. Assessable receipts and deductible expenditure are core components in working out a person's PRRT liability under the PRRTA Act and the PRRTA Regulations. The PRRTA Act anti-avoidance provisions apply to the PRRTA Act and the PRRTA Regulations.

Comparison of key features of new law and current law

Table 2.1 Comparison of new law and current law

New law	***Current law***
Provides clarity that the 'would have' and 'might reasonably be expected to have' limbs in the tax benefits definition represent alternative bases upon which the existence of a tax benefit can be demonstrated.	The 'would have' and 'might reasonably be expected to have' limbs may not clearly represent separate and distinct bases upon which the existence of a tax benefit can be demonstrated.
Clarifies that the 'would have' limbs operates on the basis of a postulate that comprises existing facts and circumstances minus the scheme.	There is uncertainty whether the 'would have' limbs involves a prediction about events or circumstances, as opposed to a mere deletion of the scheme.
Clearly shows that the 'might reasonably be expected to have' limb operates on the basis of postulates that are reasonable alternatives to the scheme, having regard to the substance of the scheme and the non-tax results and consequences achieved by the taxpayer from the scheme, but disregarding potential tax costs.	The operation of the 'might reasonably be expected to have' limb depends on an inquiry about what other courses of action were reasonably open to the participants in the scheme.
Whether the PRRT anti-avoidance provisions applies to a scheme starts with considering whether any person participated in the scheme for the sole or dominant purpose of securing for the taxpayer a tax benefit in connection with the scheme. This ensures that the examination of the tax benefit happens in	Whether the PRRT anti-avoidance provisions applies to a scheme starts with considering whether a taxpayer has secured a particular tax benefit in connection with the scheme.

New law	***Current law***
the context of examining a participant's purpose.	

Detailed explanation of new law

Operation of the anti avoidance scheme

2.7 In determining whether the PRRT anti-avoidance provision applies to an arrangement, the critical question is whether a person or persons who participated in the arrangement did so for the sole or dominant purpose of enabling the taxpayer to obtain a tax benefit. The relevant purpose must be established objectively based on an analysis of various matters, including how the arrangement was implemented, the form and substance of the arrangement, what the arrangement actually achieved as a matter of substance or reality and any changes in financial position for the taxpayer or any person who has a connection with the taxpayer as a result of the arrangement.

The bases for identifying tax benefits

2.8 Section 52 of the PRRTA Act is revised to make it clear the starting point on whether the PRRT anti-avoidance provisions apply is to consider whether a person participated in an arrangement for the sole or dominant purpose of securing a tax benefit. There is no change to the matters that must be considered when determining if the sole or dominant purpose test has been met.
[Schedule 2, item 1, sections 51A(1) of the PRRTA Act]

2.9 This mirrors the sole or dominant purpose test under section 177D of the ITAA 1936 such that the Commissioner considers whether a participant in the arrangement had the requisite purpose of securing a tax benefit for the taxpayer in connection with the arrangement, and whether a tax benefit was obtained in connection with the arrangement.
[Schedule 2, item 1, sections 51A(1) and 52 of the PRRTA Act]

2.10 Where it is determined that a tax benefit has been obtained in connection with the arrangement, the Commissioner may make an adjustment to cancel that tax benefit.
[Schedule 2, item 2, subsection 53(1) of the PRRTA Act]

Annihilation approach

2.11 The existing tax benefit scope in the PRRTA Act includes a reference to an amount that 'would have' been obtained in absence of the arrangement. The 'would have' criterion is made explicit, and it is now clear how alternative

postulates are to be identified. This analysis is made on the basis of a postulate comprising all of the events or circumstances that actually happened or existed, other than merely those that form part of the arrangement.
[Schedule 2, item 1, subsection 51A(2) of the PRRTA Act]

Reconstruction approach

2.12 When postulating what 'might reasonably be expected' to have occurred in the absence of an arrangement, the postulate must represent a reasonable alternative to the arrangement, in the sense that it could reasonably take the place of the arrangement.
[Schedule 2, item 1, subsections 51A(3) of the PRRTA Act]

2.13 Consideration to what might be reasonably expected will necessarily require speculation about the state of affairs that would have existed if the arrangement had not been entered into or carried out.
[Schedule 2, item 1, subsections 51A(4) of the PRRTA Act]

2.14 Under either the annihilation or reconstruction approach, a taxpayer will have obtained a tax benefit in connection with an arrangement if it is demonstrated that:

- a tax effect would have followed from applying the provisions in the PRRTA Act to the facts once the arrangement is assumed away or reconstructed; and
- the tax effect secured in connection with the arrangement is more advantageous than the tax effect without the arrangement.

Commencement, application, and transitional provisions

2.15 Schedule 2 to the Bill commences the day after Royal Assent.

2.16 The amendments apply to any arrangement that was entered into on or after 1 July 2023.

2.17 The amendments apply to the 2023-2024 financial year and later financial years, consistent with application date announced in the 2023-24 Budget. This application date is necessary and appropriate to achieve the outcome of minimizing the potential for taxpayers to obtain artificial and contrived tax benefits.

Chapter 3: Capital allowances for mining, quarrying or prospecting rights and clarifying the meaning of exploration for petroleum

Table of Contents:

Outline of chapter

3.1 Schedule 3 to the Bill amends the PRRTA Act to clarify the meaning of 'exploration for petroleum'.

3.2 Additionally, amendments to the ITAA 1997 clarify:

- that MQPRs cannot be depreciated for income tax purposes until they are used, not merely held; and
- the circumstances in which the issue of new rights over areas covered by existing rights lead to income tax adjustments.

3.3 All legislative references in this Chapter are to the ITAA 1997 unless otherwise stated. Additionally, all references to the 'decision' are references to the decision of the Full Federal Court in *Commissioner of Taxation v Shell Energy Holdings Australia Limited* [2022] FCAFC 2.

Context of amendments

3.4 Following the decision, clarification was required to the PRRTA Act and ITAA 1997. The decision was, amongst other things, in relation to whether the taxpayer in that case was entitled to deduct an amount equal to the cost of the asset under subsection 40-80(1) of the ITAA 1997. Broadly, that subsection

provides that the decline in value of a depreciating asset that a taxpayer holds is the asset's cost, provided the taxpayer first uses the asset for 'exploration' and other conditions are satisfied.

3.5 The activities in question in the decision were activities conducted for the purpose of evaluating the feasibility of recovering petroleum on a commercial basis. The outcome of the case raised three significant issues:

- Firstly, the ordinary meaning of the term 'exploration' was determined to not have a precise or rigid meaning, could be wider than previously understood, and can extend beyond searching for petroleum to assessing the commercial viability of a project. Although it was also determined that the meaning of the term 'exploration' will depend on the relevant statutory context, there may have been ambiguity raised by the decision, which could potentially make a greater range of expenses eligible for the concessional tax treatment afforded to exploration expenditure.
- Secondly, taxpayers may have begun depreciating intangible assets such as MQPRs from when they acquired them, rather than when they began undertaking activities authorised by the rights, potentially bringing forward the intended start time for decline in value deductions.
- Thirdly, taxpayers may have been required to make more frequent balancing adjustments for income tax purposes due to routine conversion of MQPRs, increasing administrative burden and prematurely crystalising gains or losses in relation MQPRs. There may also have been inadvertent impacts on the effective life of an MQPR if a balancing adjustment occurred in such circumstances.

Exploration for petroleum

3.6 Although the decision was concerned with income tax legislation and did not consider the meaning of the phrase 'exploration for petroleum' in the PRRTA Act, there may have been ambiguity raised by the decision, which could have resulted in an expanded meaning of that phrase in the PRRTA Act. The amendments clarify the meaning of that phrase, consistent with established practice and the policy intent.

3.7 The 2023-24 Budget announcement made clear the Government's policy that the PRRTA Act will be amended, with retrospective effect from 21 August 2013, to clarify that 'exploration for petroleum' is limited to the 'discovery and identification of the existence, extent and nature of the petroleum resource' and does not extend to 'activities and feasibility studies directed at evaluating whether the resource is commercially recoverable'. The amendments give effect to the Government's policy intent and the Commissioner's

administrative treatment and written binding advice as set out in TR 2014/9, which applied to expenditure incurred from 21 August 2013.

MQPRs 'first use' and balancing adjustments

3.8 Broadly, subsection 40-80(1) of the ITAA 1997 provides that the decline in value of a MQPR you hold is its cost if you 'first use' the MQPR for 'exploration or prospecting' and some other conditions are also met.

3.9 The decision meant that 'first use', in relation to an MQPR, may have been interpreted as when a taxpayer acquired the MQPR rather than when they began undertaking activities authorised by the MQPR. This may have resulted in unintended consequences, including by potentially bringing forward the start time for decline in value deductions.

3.10 Further, under Subdivision 40-D;

- a taxpayer may have to make an adjustment to their taxable income if they stop holding a depreciating asset; and
- the adjustment is generally based on the difference between the 'termination value' of the asset when they stop holding it and its 'adjustable value'.

3.11 It is common for one type of mining right to convert to a different type of mining right or rights. For example, a retention lease may convert to a production licence or licences. The decision may have resulted in unintended consequences in some conversion cases by requiring taxpayers to make more frequent balancing adjustments for income tax purposes where one or more new rights were issued over part of the areas covered by one or more ceased or existing rights.

Summary of new law

3.12 These amendments provide for the following:

- The reference to 'exploration for petroleum' in paragraph 37(1)(a) of the PRRTA Act is limited to discovering petroleum, identifying the extent of discovered petroleum, or identifying the nature of discovered petroleum. That reference does not extend to determining the commercial viability, economic feasibility or technical feasibility in relation to the recovery of petroleum or how to recover any petroleum.
- Limit when the 'first use' of an MQPR occurs, by specifying that 'first use' starts when an activity that is authorised by the mining right is undertaken, and not just when the MQPR begins to be held.

- Clarify that an income tax balancing adjustment does not occur in relation to a new MQPR in circumstances where the new MQPR is granted over an area that is the same or part of the area governed by an existing MQPR.

Detailed explanation of new law

Clarifying 'exploration for petroleum' in the PRRTA Act legislation

3.13 The amendments in this schedule clarify the meaning of the phrase 'exploration for petroleum' in paragraph 37(1)(a) of the PRRTA Act. Broadly, that phrase is limited to discovering petroleum, identifying the extent of discovered petroleum, or identifying the nature of discovered petroleum. Generally, this will include searching to discover petroleum, the process of ascertaining the size of the discovery and appraising its physical characteristics.

3.14 Subsection 37(4) of the PRRTA Act exhaustively provides the meaning of the phrase 'exploration for petroleum' in paragraph 37(1)(a) of that Act. Subsection 37(4) provides that the reference to exploration for petroleum in paragraph 37(1)(a) is a reference to:

- discovering petroleum;
- identifying the extent of discovered petroleum; or
- identifying the nature of discovered petroleum.

[Schedule 3, Part 2, item 8, subsection 37(4) of the PRRTA Act]

3.15 Subsection 37(5) of the PRRTA Act ensures that the meaning of the phrase 'exploration for petroleum' does not extend to certain things. Once petroleum is discovered, operations and facilities carried on or provided to evaluate the discovery (referred to in this Explanatory Memorandum as 'non-exploration evaluation activities') do not fall within the meaning of the phrase 'exploration for petroleum'. To this end, subsection 37(5) puts beyond doubt that the reference to 'exploration for petroleum' in paragraph 37(1)(a) does *not* include a reference to determining:

- any of the following in relation to the recovery of petroleum:
  - commercial viability
  - economic feasibility
  - technical feasibility; or
- how to recover any petroleum.

[Schedule 3, Part 2, item 8, subsections 37(5) and (6) of the PRRTA Act]

3.16 The amendments ensure that the meaning of the phrase 'exploration for petroleum' in paragraph 37(1)(a) of the PRRTA Act does not extend to evaluating whether the recovery of petroleum is commercially viable, economically feasible, or technically feasible, or how to recover any petroleum. These non-exploration evaluation activities will generally instead fall within paragraph 38(1)(a) of the PRRTA Act (about general project expenditure), which refers to any feasibility or environmental study in the context of operations and facilities preparatory to the recovery of petroleum and other specified activities.

3.17 Certain feasibility and environmental studies and other preparatory operations and facilities carried on or provided may be 'in connection with exploration for petroleum', and therefore fall within paragraph 37(1)(a) of the PRRTA Act, where there is a reasonably direct relationship between those things and exploration for petroleum. That is, in the context of the clarified meaning of the phrase 'exploration for petroleum', those operation and facilities carried on or provided must be directly connected to discovering petroleum, identifying the extent of discovered petroleum, or identifying the nature of discovered petroleum.

Example 3.1 Exploration for petroleum

The joint venture participants (JVPs) in an exploration permit have discovered a large petroleum resource 300 kilometres from the Australian mainland. The JVPs agree to fund the drilling of three appraisal wells.

The three appraisal wells help the JVPs determine the nature and extent of the petroleum resource, and to investigate the physical and chemical properties of the petroleum.

The drilling of the three appraisal wells would be covered by paragraph 37(1)(a) of the PRRTA Act, as the drilling is an operation that is carried on to ascertain the size of the petroleum discovery and appraise the discovered petroleum's physical characteristics.

Subsequent to the completion of the drilling of the three appraisal wells, the resulting analysis has identified a significant petroleum resource. Accordingly, the JVPs have commenced an investigation into several potential development scenarios.

Due to subsection 37(5), the investigation of the various potential development scenarios would not be covered by paragraph 37(1)(a) of the PRRTA Act. These operations are carried on to investigate the development of the petroleum resource. Additionally, the operations do not have a reasonably direct relationship to exploration for petroleum.

Clarifying 'first use' of 'mining, quarrying and prospecting rights'

3.18 The amendments clarify that MQPRs that are depreciating assets start to decline in value from the time when the holder of the right engages in an activity that involves exercising one or more rights conferred by the asset. For the purposes of the 'days held' requirement in paragraph 40-70(1)(b), where an MQPR has been first used by the holder exercising the rights conferred by the asset, then the decline in value is not paused merely because authorised activities are not undertaken on a daily basis.

3.19 The amendments deem all provisions in Division 40 and Subdivision 328D that rely on the concept of 'use' in relation to an MQPR as a reference to engaging in an activity that involves exercising rights conferred by the MQPR.

3.20 The amendments ensure that the mere holding of an MQPR without commencing activities authorised by the right (for example, relevant mining, quarrying and prospecting activities that are authorised by the right) is not enough to constitute 'first use' for the purpose of section 40-80.

3.21 Ordinarily, the activity that triggers the start time for decline in value deductions would be conducted in the area to which the MQPR relates. Whether there is an activity that involves exercising rights conferred by the MQPR will depend on the relevant facts and circumstances. Activities that are not permitted nor authorised by the MQPR, or that could be legally undertaken without holding the MQPR, are not a use of the MQPR. Additionally, activities that are merely incidental, accidental, or irrelevant to other activities that are permitted by the MQPR, will ordinarily be of a de minimis or trivial nature, and thus not a use of the MQPR.[1]
[Schedule 3, Part 1, item 3, subsection 40-42(1) of the ITAA 1997]

3.22 The amendments in subsection 40-42(1) relate to assets that are interests described in paragraphs (a), (b) or (d) of the definition of MQPR in subsection 995-1(1). If the asset is an interest covered by paragraph (c) of that definition, then under subsection 40-42(1) the relevant rights conferred by the assets are the rights conferred by the authority, licence, permit, right or lease referred in paragraph (c) of that definition. The exercise of rights conferred by the authority, licence, permit, right or lease referred in paragraph (c) of that definition does not include the exercise of rights under any joint venture agreement in relation to the MQPR.
[Schedule 3, Part 1, item 3, subsection 40-42(2) of the ITAA 1997]

[1] This is consistent with the established legal principle that, unless the contrary intention appears, the law disregards certain things as de minimis (see, for example, *Farnell Electronic Components Pty Ltd v. Collector of Customs* ((1996) 72 FCR 125; 1996142 ALR 322 per Hill J at 324-327).

3.23 Further, the definition of 'installed ready for use' in subsection 9951(1) is clarified in relation to its application to MQPRs. The amendments make it clear that an MQPR cannot be 'installed ready for use'.
[Schedule 3, Part 1, item 6, subsection 995-1(1) of the ITAA 1997]

Example 3.2 First 'use' of a MQPR and start time

In June 2023, a state government grants an exploration licence to B$M Co. The exploration licence authorises B$M Co to conduct exploration activities over an area of land, under the state's mining legislation. Between 10 October and 30 October 2023, B$M Co performed a 2D seismic survey and collected samples from the site.

B$M Co has carried out a non-trivial activity which is authorised by the exploration licence, and which they would not be legally entitled to carry on but for holding that licence. Therefore, B$M Co first 'used' the licence on 10 October 2023, and the decline in value of the MQPR began on this date for the purposes of section 40-60 (start time).

On 1 November 2025, B$M Co started exploration drilling. Accordingly, no 'use' of the MQPR occurred between 31 October 2023 and 31 October 2025. Despite this pause in the 'use' of the MQPR, the decline in value will continue for the purposes of the 'days held' requirement.

Clarifying when income tax balancing adjustments occur to 'mining, quarrying and prospecting rights'

3.24 Amendments are made to subsection 40-30(6) to ensure that a balancing adjustment event does not occur in relation to an MQPR that ends where that MQPR is replaced by one or more new MQPRs and those MQPRs relate to part of the area that the MQPR that ended related to. For the purposes of Division 40, the new MQPRs are treated as a continuation of the other MQPR.

3.25 The general purpose of subsection 40-30(6) is to deal with conversion cases. For example, the conversion of an area covered by an exploration permit to a production license. However, depending on the circumstances, the area covered by the new MQPR may not be the same as the area covered by the old MQPR and any difference in area could be significant. The amendments to subsection 40-30(6) ensures that the subsection applies in such cases. The amendments also ensure that a balancing adjustment event does not occur to the old MQPR and that, among other things, the new MQPR, or MQPRs, have the same start time and effective life as the old MQPR.
[Schedule 3, Part 1, item 1, paragraph 40-30(6)(b) of the ITAA 1997]

3.26 Additionally, a new rule is inserted to avoid doubt that, for subsection 4030(6) to apply, the old MQPR and the new MQPR do not need to end and begin in the same income year.
[Schedule 3, Part 1, item 2, subsection 40-30(7) of the ITAA 1997]

3.27 New provisions make clear the treatment of partial conversions of MQPRs. If:

- an MQPR (the 'old MQPR') relates to an area; and
- the taxpayer begins to hold one or more MQPRs (the 'partial new MQPR') that relates to an area that is part of the area that the old MQPR relates to; and
- the old MQPR does not end when you begin to hold the partial new MQPR;

then, for the purposes of Division 40, the old right is taken to have split into an asset that is the partial new MQPR and an asset that is the split old MQPR. The time of the split is just before the time when the partial new MQPR begins to be held. Both the partial new right and the split old right are continuations of the old right.
[Schedule 3, Part 1, item 1, note to paragraph 40-30(6)(b) and item 4, section 40-122 of the ITAA 1997]

3.28 Because both the partial new right and the split old right are continuations of the old right, this will mean that, among other things, the partial new right and the split old right:

- have the same effective life as the old right;
- have the same start time (if any) as the old right;
- must use the same decline in value method (if any) as the old right;
- are generally subject to the same treatment under section 40-80 (about immediate deductions) as the old right; and
- more generally – inherit the tax characteristics of the old right for Division 40 purposes.

3.29 Subsection 40-115(1) applies to MQPRs split under section 40-122. This means that the occurrence of this split allows section 40-205 to set the cost of the split old MQPR and the partial new MQPR, with the cost of each separate asset generally being based on a reasonable proportion of the adjustable value of the old MQPR just before the time of the split. A balancing adjustment does not occur for the old MQPR merely because of the split (per subsection 40-295(3)).

3.30 In relation to subsection 40-30(6), where the new right only relates to part of the area covered by the other right but and the other right ends, then there is a proportionate continuation of the other right. Where

subparagraph 40-30(6)(b)(ii) applies, then the first element of the cost of the new right (or rights) is a reasonable proportion of the adjustable value of the other right just before the other right ended. This ensures that the full cost of the other right, where the new right (or rights) relate to part of the area covered by the other right, is not inappropriately carried over in full to each of the new rights. A reasonable proportion could be worked out based on the relative market values of the new right or rights.
[Schedule 3, Part 1, item 5, section 40-217 of the ITAA 1997]

Commencement, application, and transitional provisions

3.31 Schedule 3 to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.
[Table item 1 in the Commencement information table]

3.32 As announced in the 2023-24 Budget, the amendments relating to section 37 of the PRRTA Act apply to all expenditure incurred from 21 August 2013.

3.33 The retrospective application of the amendments align with the date of effect of the ATO's binding views on the meaning of paragraph 37(1)(a) of the PRRTA Act as set out in taxation ruling TR 2014/9 and the administrative treatment set out in the decision impact statement issued by the ATO following the Administrative Appeals Tribunal decision in *ZZGN v Commissioner of Taxation* [2013] AATA 351. The retrospective application provides certainty by ensuring the law is consistent with established practice and the policy intent.
[Schedule 3, Part 2, item 9]

3.34 Item 9 of Part 2 to Schedule 3 to the Bill ensures that the amendments to section 37 do not make a person criminally liable in respect of acts or omissions of the person before the day on which the amendments commence, if the person would not have been so liable had those amendments not been enacted. This provision is consistent with the intention that the amendments, on their own, should not give rise to any retrospective criminal liability.
[Schedule 3, Part 2, item 10]

3.35 The amendments relating to the capital allowance provisions dealing with MQPRs apply in respect of an MQPR that an entity started to hold after the date of announcement (7:30PM (AEST) on 9 May 2023 (Budget night)). In relation to the amendments to subsection 40-30(6), those amendments apply in relation to conversion cases where the 'new right' is acquired after Budget night. In relation to new subsection 40-122, that section applies in relation to conversion cases where the 'partial new right' is acquired after Budget night.
[Schedule 3, Part 1, item 7]

Chapter 4: Multilateral development banks

Table of Contents:

Outline of chapter

4.1 Schedule 4 to the Bill amends the ADB Act, EBRD Act and IMA Act 1947 to streamline the process under which amendments to the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement are incorporated into domestic legislation. Consistent with modern drafting practice, the amendments incorporate the agreements into legislation by reference. This will ensure any future amendments to the agreements are automatically incorporated, including amendments currently being progressed to the EBRD Agreement and IBRD Agreement.

Context of amendments

4.2 Australia is a member of, and holds shares in, numerous MDBs, including the EBRD, IBRD and ADB. MDBs play a vital role in supporting global economic growth and reducing poverty. They do this by providing financial products and technical advice to developing countries.

4.3 Australia is also a member of the IMF, which is the central institution of the Global Financial Safety Net that underpins the stability of the international monetary system - the system of exchange rates and international payments that enables countries to transact with each other.

4.4 In 2021, the G20 commissioned the CAF Review. The review was commissioned in recognition of the critical role MDBs have to play in providing affordable financing to support economic recovery in a post-pandemic context, and that MDBs' scope to leverage shareholders' capital contributions to provide such financing was determined by their capital adequacy frameworks (CAFs). The review aimed to promote the sharing of best practices and maximise MDB development impact.

4.5 The Final Report of the CAF Review was released in July 2022 and had numerous recommendations, including that MDBs relocate specific numeric leveraging targets from MDB statutes to MDB capital adequacy frameworks, to better reflect modern financial practises (Recommendation 1C).

4.6 Amendments are currently being progressed to the EBRD Agreement and IBRD Agreement to implement Recommendation 1C to remove statutory lending limits following the CAF Review. The EBRD Agreement is also being amended to expand the geographic scope of the EBRD to sub-Saharan Africa and Iraq. The EBRD and IBRD Board of Governors have approved the respective amendments.

4.7 To implement these amendments into domestic legislation, and to futureproof legislation for potential further amendments made to the agreements establishing MDBs and the IMF, the amendments made by Schedule 4 to the Bill incorporate the relevant agreements into legislation by reference.

Summary of new law

4.8 Schedule 4 to the Bill amends the ADB Act, EBRD Act and IMA Act 1947 to define the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement by reference to each respective agreement. Subsequently, the Schedules to the ADB Act, EBRD Act and IMA Act 1947 containing the full English text of each agreement are repealed to streamline the legislation.

Detailed explanation of new law

MDB and IMF Agreements are incorporated into legislation by reference

4.9 The amendments in Schedule 4 to the Bill streamline the way the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement are incorporated into legislation.

4.10 Under the new approach, and consistent with modern drafting practice, the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement are defined by reference to each respective agreement, as in force for Australia from time to time. These definitions provide the details of each agreement, as

well as where it can be publicly accessed online through the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).
[Schedule 4, items 1, 9, 23 and 25, section 3 of the ADB Act, section 3 of the EBRD Act, section 3 of the IMA Act 1947]

4.11 The amendments update the previous approach in which the English text of each agreement and certain resolutions was replicated in full in a Schedule to the legislation. As a result of the new approach, the Schedules to the ADB Act, EBRD Act and IMA Act 1947 are repealed.
[Schedule 4, items 3, 13 and 27, the Schedule to the ADB Act, Schedule 1 to the EBRD Act, and Schedules 1, 2 and 3 to the IMA Act 1947]

4.12 The amendments also update references to account for the amended definitions and to reflect the repeal of the Schedules.
[Schedule 4, items 2, 10 to 12, 22, 24 and 26, paragraph 4(a) of the ADB Act, section 3, paragraph 4(a) and section 6 of the EBRD Act, section 3 of the IMA Act 1947]

4.13 The definition of 'Asian Development Bank' in the IMA Act 1947 is repealed to provide for consistency in referring to the ADB without requiring a definition in legislation where the primary purpose is not solely related to the ADB.
[Schedule 4, item 21, section 3 of the IMA Act 1947]

4.14 Since international agreements are now ordinarily available on the internet, it is no longer necessary for legislation to include the text of agreements. Readers can be directed to find the text of the agreement through reference to a website containing the agreements. Further, requiring the passage of primary legislation or regulations to update the text of an amended agreement in domestic legislation can be inefficient and administratively burdensome. Often, an amendment to these agreements will have already been voted in favour of at international law and will separately be subject to parliamentary scrutiny through our domestic treaty amendment process. Further, some amendments will enter into force for Australia at international law regardless of whether Australia implements the amendment in domestic legislation.

4.15 The amendments made by Schedule 4 to the Bill do not alter the application of the ADB Agreement, EBRD Agreement, IBRD Agreement or IMF Agreement to Australia.

Future amendments to MDB and IMF Agreements are automatically incorporated into legislation

4.16 As a result of the amendments made by Schedule 4 to the Bill, future amendments made to the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement will be automatically incorporated into domestic legislation on coming into effect at international law. This includes

amendments currently being progressed to the EBRD Agreement and IBRD Agreement.

4.17 While amendments to the IBRD Agreement and IMF Agreement were already automatically incorporated into the IMA Act 1947, the new approach ensures readers are directed to find the full updated text of the agreements, incorporating all amendments, in one location. Under the previous approach, the agreements were defined by the text of the agreements being replicated in a Schedule, and as amended by any other amendments that had entered into force for Australia. This meant the text of any amendments to the agreements was not always incorporated into the Schedules, which had the potential to mislead readers. This approach provides greater certainty and is consistent with the approach taken in the amendments to the EBRD Act and ADB Act.

4.18 The amendments currently being progressed to the EBRD Agreement are to:

- enable the limited and incremental expansion of the geographic scope of the EBRD's operations to sub-Saharan Africa and Iraq (Article 1); and
- remove the statutory capital limitation on ordinary operations and entrust the Board of Directors to establish and maintain any appropriate limits with respect to capital adequacy metrics (Article 12.1).

4.19 The amendment to the IBRD Agreement is to remove the IBRD's Lending Limitation (Article III, Section 3).

4.20 In accordance with the voting procedures for each agreement, the amendments to the EBRD Agreement and IBRD Agreement will enter into force at international law should a sufficient number of members confirm their acceptance of the amendments. At such time, the amendments to the EBRD Agreement and IBRD Agreement will be automatically incorporated into Australia's domestic legislation.

Sufficient parliamentary oversight is retained

4.21 As any future amendments to the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement will constitute a treaty action, the decision to accept those amendments will be subject to Australia's treaty making procedures, such as consideration by the Joint Standing Committee on Treaties and approval by relevant ministers. This will provide appropriate parliamentary oversight of any proposed amendments.

Consequential amendments

4.22 To support the amendments to the ADB Act, EBRD Act and IMA Act 1947, Schedule 4 to the Bill makes consequential amendments to various Acts. This includes replacing references to the now repealed Schedules to the ADB Act,

EBRD Act and IMA Act 1947 with the amended definitions of the ADB, EBRD and IBRD.

[Schedule 4, items 4 to 8, 14, 15, 17 to 20, 28 and 29, section 3 of the Asian Development Bank (Additional Subscription) Act 1972, section 3 of the Asian Development Bank (Additional Subscription) Act 1977, section 3 of the Asian Development Bank (Additional Subscription) Act 1983, section 3 of the Asian Development Bank (Additional Subscription) Act 1995, section 3 of the Asian Development Bank (Additional Subscription) Act 2009, section 3 and paragraph 7(2)(c) of the International Bank for Reconstruction and Development (General Capital Increase) Act 1989, section 3 of the International Bank for Reconstruction and Development (Share Increase) Act 1988, section 3 of the International Bank for Reconstruction and Development (Share Increase) Act 1982, section 3 of the International Bank for Reconstruction and Development (Share Increase) Act 1986, section 3 of the International Monetary Agreements Act 1974 and section 3 of the International Monetary Agreements (Quota Increase) Act 1980]

4.23 An amendment is also made to correct minor typographical errors.
[Schedule 4, item 16, paragraphs 7(2)(a) and (b) of the International Bank for Reconstruction and Development (General Capital Increase) Act 1989]

4.24 The definitions of 'International Bank for Reconstruction and Development' and 'Asian Development Bank' in the *Official Development Assistance Multilateral Replenishment Obligations (Special Appropriation) Act 2020* have been repealed to provide for consistency with other Acts that refer to the IBRD and the ADB. These terms are only defined where the primary purpose of the legislation relates to the IBRD or the ADB, otherwise these terms remain undefined. For example, the ADB Act will maintain a definition of 'Asian Development Bank' as that legislation's primary purpose relates to Australia's membership of the ADB.
[Schedule 4, item 30, section 3 of the Official Development Assistance Multilateral Replenishment Obligations (Special Appropriation) Act 2020]

4.25 Consistent with the amendments to the ADB Act, EBRD Act and IMA Act 1947, the consequential amendments do not alter the application of the agreements to Australia.

Commencement, application, and transitional provisions

4.26 Schedule 4 to the Bill commences the day after Royal Assent.

Chapter 5: Miscellaneous and technical amendments

Table of Contents:

Outline of chapter

5.1 Schedule 5 to the Bill makes a number of miscellaneous and technical amendments to Treasury portfolio legislation. The amendments demonstrate the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.

5.2 The amendments repeal inoperative provisions, simplify provisions and reduce red tape.

Context of amendments

5.3 Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes. The amendments are part of the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.

5.4 The miscellaneous and technical amendments process was first supported by a recommendation of the 2008 Tax Design Review Panel, which was appointed to examine how to reduce delays in the enactment of tax legislation and improve the quality of tax legislation. The miscellaneous and technical

amendments process has since been expanded to all Treasury portfolio legislation.

Summary of new law

5.5 The miscellaneous and technical amendments maintain and improve the quality of Treasury legislation by:

- repealing redundant and inoperative provisions;
- enhancing readability and administrative efficiency;
- reducing unnecessary red tape; and
- making other technical changes.

Detailed explanation of new law

Part 1 – Amendments commencing day after Royal Assent

Division 1 – Audit firm's and audit company's rotation obligations

5.6 Division 1 of Part 1 of Schedule 5 to the Bill makes editorial amendments to provisions relating to superannuation entity auditing requirements in the Corporations Act.

5.7 The amendments insert the word 'auditor' into paragraphs 324DC(1)(a), 324DC(2)(a), 324DD(1)(a), 324DD(2)(a) and 324DD(3)(a). The word 'auditor' was inadvertently omitted from these provisions when drafted. ***[Schedule 5, items 1 to 5, paragraphs 324DC(1)(a), 324DC(2)(a), 324DD(1)(a), 324DD(2)(a) and 324DD(3)(a) of the Corporations Act]***

5.8 The amendments also insert a comma in Schedule 3 in the table item dealing with subsections 322(1), (1A), (2) and (2A). ***[Schedule 5, item 6, Schedule 3 (table item dealing with subsections 322(1), (1A), (2) and (2A), column headed "Provision") to the Corporations Act]***

Division 2 – Insolvency safe harbour

5.9 Directors of a company have a duty to prevent the company from trading whilst insolvent. Section 588G of the Corporations Act states a director has a duty to prevent a company from incurring a debt when that company is

insolvent, or when the director should reasonably suspect that the company is insolvent or would become insolvent as a result of the transaction.

5.10 Section 588GA provides a safe harbour which shields a director from a breach of this duty in certain circumstances. The safe harbour is designed to enable directors, who are beginning to suspect their company is or may become insolvent, to pursue a restructure or other course of action that is likely to deliver a better outcome for the company rather than proceeding immediately to voluntary administration or winding up.

5.11 Section 588HA requires an independent review to examine and report on the operation of the safe harbour for directors as soon as practicable two years after the commencement of the safe harbour. Under that independent review of the insolvent trading safe harbour which occurred in 2021, the Review Panel made 14 recommendations. Of those recommendations, Division 2 of Part 1 of Schedule 5 to the Bill implements Recommendations 3, 6, 8 and 9.

Recommendation 3

5.12 A director of a company is not liable for a civil penalty for failing to prevent the company from incurring a debt while insolvent, if the debt is incurred 'directly or indirectly in connection' with a course of action that is reasonably likely to lead to a better outcome for the company, or if it is an ordinary trade debt incurred in the usual course of business. This amendment, which implements Recommendation 3, provides clarification to directors and is consistent with the language used in the Insolvent Trading Moratorium in section 588GAAA of the Corporations Act.
[Schedule 5, item 8, paragraph 588GA(1)(b) of the Corporations Act]

Recommendation 6

5.13 To implement Recommendation 6, an amendment is made to the definition of 'restructuring' in section 9 of the Corporations Act to specify that the definition does not apply in paragraph 588GA(2)(e). The section 9 term is defined by reference to concepts which only apply for certain small business companies under Part 5.3B of the Corporations Act. The definition of 'restructuring' prior to the amendment was not appropriate in the context of paragraph 588GA(2)(e).
[Schedule 5, item 7, section 9 (definition of 'restructuring') of the Corporations Act]

Recommendation 8

5.14 To implement Recommendation 8, amendments are made to subsection 588GA(2) of the Corporations Act to expressly cover circumstances where advice is being sought from an appropriately qualified advisor by the company itself, rather than the company's director. This clarifies the situation where it is unclear whether advice was provided to a director or company.
[Schedule 5, items 9 to 13, paragraphs 588GA(2)(a) to (e) and subsection 588GA(2) of the Corporations Act]

Recommendation 9

5.15 To implement Recommendation 9, the amendments align the wording of subparagraph 588GA(4)(a)(i), which relates to payment of employee entitlements, with that in the employee entitlement safeguard in Regulation 5.3B.24 of the Corporations Regulations. Under the amendments, the term 'by the time they fall due' is updated to 'that are payable'. As per the recommendation, the amendments align the drafting between the primary and subordinate legislation. There is no intention to alter the operation of the law under these amendments.
[Schedule 5, item 14, subparagraph 588GA(4)(a)(i) of the Corporations Act]

Division 3 – Financial services law

5.16 Division 3 of Part 1 of Schedule 5 to the Bill makes minor consequential amendments in support of the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*. The amendments in that Act renumbered the paragraphs contained in the definition of 'financial services law' in the Corporation Act.

5.17 Paragraphs 912D(3)(b) to (e) and subparagraph 915B(3)(ca)(ii) of the Corporations Act reference paragraphs in the definition of financial services law. The *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* did not make consequential amendments to align the relevant provisions with the renumbered definition of financial services law.

5.18 The amendments update paragraphs 912D(3)(b) to (e) and subparagraph 915B(3)(ca)(ii) so that they refer to the correct and updated paragraphs in section 761A of the Corporations Act.
[Schedule 5, items 15 to 19, paragraphs 912D(3)(b) to (e) and subparagraph 915B(3)(ca)(ii) of the Corporations Act]

Division 4 – Correcting duplicated section number

5.19 Division 4 of Part 1 of Schedule 5 to the Bill rectifies the duplication of a legislative reference in the Corporations Act. The *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* inserted a new section 1684 into Part 10.58 of the Corporations Act. However, Part 10.57 of the Corporations Act already contains a section 1684.

5.20 The amendment renumbers section 1684 in Part 10.58 of the Corporations Act as section 1685 to remove this duplication in referencing.
[Schedule 5, item 20, section 1684 (the section 1684 inserted by item 176 of Schedule 5 to the Treasury Laws Amendment (2022 Measures No. 4) Act 2023) of the Corporations Act]

Division 5 – Benefits provided by taking out insurance

5.21 Division 5 of Part 1 of Schedule 5 to the Bill amends sections 68AAB and 68AAC of the SIS Act to ensure all members of regulated superannuation funds can automatically maintain their insurance following a successor fund transfer.

5.22 Under the SIS Act, regulated superannuation funds are prevented from automatically providing insurance to members that do not satisfy the minimum age and balance requirements, unless those members make an election to receive insurance.

5.23 These amendments ensure members who were not required to make an election in the original fund, but also do not satisfy the requirements to automatically receive insurance in the successor fund, are able to continue receiving insurance without making an election.
[Schedule 5, items 21, 22 and 23, subsections 68AAB(3B), (3C), 68AAC(3B) and (3C) of the SIS Act]

Division 6 – Actuaries and auditors of superannuation entities

5.24 Division 6 of Part 1 of Schedule 5 to the Bill relocates certain requirements from the SIS Regulations into the SIS Act. Minor amendments are also made to improve the clarity of these requirements. The minor amendments for clarity are consistent with the existing requirements, as reflected in the Act and the regulations which are being relocated.

5.25 Section 130 of the SIS Act sets obligations of actuaries and auditors to report to the Regulator when the financial position of a superannuation entity is unsatisfactory.

5.26 The amendments update subsection 130(1) of the SIS Act to incorporate the requirements in subregulations 9.03(4) and (5) of the SIS Regulations into the SIS Act. Relocating these provisions to the SIS Act does not affect the operation of the law, but provides certainty to readers of the legislation that the obligations as detailed in the regulations are legally valid.
Subregulations 9.03(4) and (5) of the SIS Regulations will also be repealed to rectify duplication.
[Schedule 5, item 25, paragraph 130(1)(b) of the SIS Act]

5.27 The amendments also update subsection 130(1) to clarify that the obligation applies to an auditor or actuary of the superannuation entity. Auditors and actuaries may perform functions beyond audit or actuarial functions in relation to an entity. If in the course of performing those other functions the auditor or actuary obtains information relevant to the financial position of the entity, the auditor or actuary would need to report this to the Regulator in the same way as they would need to report information obtained in the course of performing

their audit or actuarial functions.
[Schedule 5, item 24, paragraph 130(1)(ab) of the SIS Act]

5.28 New subsections 130(6) and (6A) to clarify that a person must consider any matters prescribed by the regulations for the purposes of this forming an opinion whether the financial position of an entity may be about to become unsatisfactory but that this does not limit the matters a person may consider in forming such an opinion.
[Schedule 5, item 26, subsections 130(6) and (6A) of the SIS Act]

5.29 Section 130AA of the SIS Act sets obligations of lead auditors to report to the Regulator when the financial position of a superannuation entity is unsatisfactory.

5.30 The amendments update section 130AA of the SIS Act to incorporate the requirements in subregulation 9.03(5) of the SIS Regulations into the SIS Act. Relocating these provisions to the SIS Act does not affect the operation of the law, but provides certainty to readers of the legislation that the obligations as detailed in the regulations are legally valid.
[Schedule 5 items 27, 28 and 29, paragraphs 130AA(1)(b), (2)(b) and (4)(c) of the SIS Act]

5.31 The amendments also insert subsections 130AA(11A) and (11B) to clarify that a person must consider any matters prescribed by the regulations for the purposes of this forming an opinion whether the financial position of an entity may be about to become unsatisfactory but that this does not limit the matters a person may consider in forming such an opinion.
[Schedule 5, item 30, subsections 130AA(11A) and (11B) of the SIS Act]

5.32 These amendments apply in relation to performing a function under the SIS Act, the regulations made under that the SIS Act (i.e. the SIS Regulations), the prudential standards or the *Financial Sector (Collection of Data) Act 2001* on or after the commencement of this item.
[Schedule 5, item 31]

Division 7 – Financial reporting for superannuation entities

5.33 Division 7 of Part 1 of Schedule 5 to the Bill clarifies requirements under the SIS Act in relation to what information trustees of superannuation entities are required to give, and to whom this information is required to be given.

5.34 Section 254 of the SIS Act requires a trustee of a superannuation entity to give certain information to various persons and bodies on the establishment of that superannuation entity. This provision also requires a trustee to give certain information to the Regulator, or an authorised person, by way of written notice where that information has been requested by the Regulator or an authorised person.

5.35 The amendments improve the clarity of drafting by separating the two obligations contained in section 254 of the SIS Act into two distinct provisions. Under the amendments, the first obligation, covered by new section 254, relates to information which a trustee of a superannuation entity must provide upon establishment of the entity. The second obligation, new section 254A, relates to the trustee's obligation to comply with a request for certain information by the Regulator or an authorised person. Minor consequential amendments are made to ensure the relevant notes appear with the relevant obligation once they are separated.
[Schedule 5, items 34 and 36, sections 254 and 254A of the SIS Act]

5.36 The amendments make minor changes to the heading to section 254 and insert a subheading before subsection 254(4) for clarity.
[Schedule 5, items 33 and 34, section 254 of the SIS Act]

5.37 Prior to the amendments, subsection 254(1) of the SIS Act required the trustee of a superannuation entity to give APRA (or another body specified in the regulations) such information as is required by the approved form. However, the Commissioner is the relevant regulator for this requirement. The amendments replace the references to APRA with references to the Commissioner. The amendments ensure that the same set of information provided to APRA under the provisions prior to the amendments, will instead be provided to the Commissioner, to which the Commissioner must give written notice that such information has been received. The taxation legislation contains strict secrecy provisions regarding protected information.
[Schedule 5, item 34, subsection 254(2B) and (3) of the SIS Act]

5.38 The amendments clarify that where a trustee is required to provide information to a person or body under subsection 254(1) of the SIS Act, the information must be given in the approved form if there is such a form. The amendments clarifies that if there is no form, the requirement is met if the information given is the information prescribed by the regulations. The delegation of this power to the regulations is reasonable, necessary and proportionate because it provides certainty to trustees who are required to provide information. It provides an alternative method of prescribing, by regulations, how information must be presented in circumstances where an approved form is not made.
[Schedule 5, item 34, subsection 254(2A) of the SIS Act]

5.39 The regulation-making power reduces the complexity of the Act by removing the administrative and technical matters from the primary law and unfolding that detail in a lower level of legislation. This accords with hierarchy of laws principles and increases the readability of the Act. As a consequence, the amendments aim to improve the level of understanding about responsibilities and obligations and, ultimately, compliance with regulatory expectations.

5.40 Additionally, the regulation-making power is appropriate and necessary as it ensures there is sufficient flexibility for the Government to make timely changes in response to evolving industry practices. Without the relevant

information the Commissioner cannot monitor superannuation entities. Any regulations made would be subject to parliamentary scrutiny, including disallowance and sunset after ten years.

5.41 The amendments update section 299U of the SIS Act to clarify that where the information given is the information prescribed by the regulations (in the case of where there is no approved form) the information prescribed may include a tax file number of the entity. Under these amendments, the collection, use, disclosure or handling of a tax file number is reasonable, necessary and proportionate to allow the monitoring of superannuation entities by the Regulator. This collection is consistent with the existing policy for where the information is collected by an approved form (subsections 299U(8) and 254(1) of the SIS Act prior to the amendments).
[Schedule 5, item 36, subsection 299U(8A) of the SIS Act]

5.42 The amendments provide for regulations to prescribe the period for providing the information requirement on the establishment of the superannuation entity. If no period is prescribed the information must be given within 7 days after the establishment of the superannuation entity. This incorporates into the SIS Act the time period that is currently specified by the regulations.
[Schedule 5, item 34, subsection 254(2) of the SIS Act]

5.43 The amendments do not amend the existing penalties for the failure to give information on establishment of superannuation entity. The existing offences continue to apply. For information, contravention of section 254 is punishable by a fine of 50 penalty units. This is also a strict liability offence punishable by a fine of 25 penalty units. Strict liability is appropriate in this circumstance, as it is necessary to strongly deter misconduct that can have serious detriment for members and the integrity of the superannuation system. Without the information, the Regulator cannot monitor superannuation entities.

5.44 Strict liability aims to reduce non-compliance, which bolsters the integrity of the regulatory regime enforced by the Commissioner. Strict liability is appropriate where there is a need to ensure offences are dealt with expeditiously to maintain public confidence in the regulatory regime.

5.45 The strict liability in section 254 meets all the conditions listed in the Attorney-General's Department's A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. For example, the fines for the offences do not exceed 60 penalty units for persons other than a body corporate or 300 penalty units for a body corporate. The application of strict liability, as opposed to absolute liability, preserves the defence of honest and reasonable mistake of fact.

5.46 The amendments do not amend the existing penalties for the failure to provide information the Regulator may request by written notice. For example, section 285 of the SIS Act applies where a person intentionally or recklessly refuses or fails to comply with the requirement. Under the existing law, they may be subject to a fine of 30 penalty units. A note is inserted to section 254A

to clarify that failure to comply with the requirement of section 254A is an offence.
[Schedule 5, item 35, note 2 to section 254A of the SIS Act]

5.47 Consequential amendments are made to various provisions of the SIS Act to update references to reflect the separation of the two obligations contained in section 254 of the SIS Act into two distinct provisions – new sections 254 and 254A.
[Schedule 5, items 32 and 37, note 1 to section 253 and subsection 299U(9) of the SIS Act]

5.48 New section 254 of the SIS Act applies in relation to superannuation entities established on or after the commencement of this item. The amendments made by this Division do not apply in relation to a notice given under subsection 254(2) of the SIS Act before the commencement of these amendments (the day after Royal Assent of the Bill).
[Schedule 5, item 38]

5.49 A transitional provision ensures that where the Commissioner makes an authorisation allowing another staff member in the Australian Taxation Office to be the receiver of the information required to be given by the trustees of superannuation entities, that authorisation has effect from the commencement of new subsection 254A. In effect, if the Commissioner has made an authorisation before the commencement of section 254A, that authorisation is not rendered invalid merely because it was made before the commencement.
[Schedule 5, item 39]

Part 2 - Amendments commencing first day of next quarter

Division 1 – A New Tax System (Goods and Services Tax) Act 1999

5.50 Division 1 of Part 2 of Schedule 5 to the Bill amends minor typographical errors in the GST Act. Subsection 48-15(2) of the GST Act refers to "section 272-97 of Schedule 2F". The amendments update this reference to "section 272-97 in Schedule 2F", to ensure consistency with usual drafting practice.
[Schedule 5, item 40, subsection 48-15(2) of the GST Act]

Division 2 – Removing redundant references to the Community Development Employment Projects Scheme

5.51 Division 2 of Part 2 of Schedule 5 to the Bill removes redundant references to the CDEP Scheme across legislation held within the Treasury portfolio, including in the ITAA 1936, *Income Tax Rates Act 1986*, *Small*

Superannuation Accounts Act 1995 and TAA 1953.
[Schedule 5, items 41 to 47, subsection 160AAA(1) (paragraphs (a), (c) and (d) of the definition of 'rebatable benefit') and paragraphs 202CB(6)(a) and 202CE(7)(a) of the ITAA 1936, section 16 of the Income Tax Rates Act 1986, subsection 64(7) of the Small Superannuation Accounts Act 1995 and paragraphs 12-110(1)(ca) and (d) of Schedule 1 to the TAA 1953]

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

5.53 The application provision under the amendments ensures any relevant CDEP Scheme payments that were made before the commencement of the amendments are not affected.
[Schedule 5, item 48]

Division 3 – Value shifting

5.54 Division 3 of Part 2 of Schedule 5 to the Bill updates the provisions of the ITAA 1997 which govern how indirect value shifts are to be treated for tax purposes. Specifically, the amendments ensure subsection 727-250(2) extends the existing condition in an exclusion to the indirect value shifting (IVS) rules relating to 'exempt' income so that it also applies to non-assessable non-exempt (NANE) income.
[Schedule 5, item 49, subsection 727-250(2) of the ITAA 1997]

5.55 The amendments apply to indirect value shifting that arises on or after the day after royal assent of the Bill.
[Schedule 5, item 50]

Division 4 – Transfer pricing guidelines

5.56 Division 4 of Part 2 of Schedule 5 to the Bill updates the guidance to the most recent version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations which was adopted by the OECD's Committee of Fiscal Affairs and published on 20 January 2022. This version of the OECD guidance material provides guidance on the application of the "arm's length principle", which represents the international consensus on the valuation, for income tax purposes, of cross-border transactions between associated enterprises.
[Schedule 5, item 51, paragraph 815-135(2)(a) of the ITAA 1997]

5.57 The amendments to paragraph 815-135(2)(a) of the ITAA 1997 applies in respect of tax (other than withholding tax) relating to income years starting on or after 1 July 2022 and in respect of withholding tax, in relation to income

derived, or taken to be derived, in income years starting on or after 1 July 2022.
[Schedule 5, item 52]

5.58 Retrospective application is appropriate in these circumstances because it provides greater certainty to taxpayers by commencing shortly after updates to the guidance material. The consolidated guidance material is already commonly referred to by taxpayers and is consistent with the transfer pricing rules in Division 815 of the ITAA 1997. This retrospective application date ensures that the law aligns as closely as possible to the publication of the guidelines by the OECD. It is expected that no taxpayers are likely to be detrimentally affected by the retrospective commencement or application of the legislation.

Part 3 - Other amendments

Duty of superannuation trustees to notify the Regulator of significant adverse events

5.59 Consequential amendments are made to section 106 of the SIS Act to reflect recent reforms to reporting requirements for registrable superannuation entities made by the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* and the supporting *Treasury Laws Amendment (Financial Reporting and Auditing of Registrable Superannuation Entities) Regulations 2023*.

5.60 To reflect those reforms, amendments are made to section 106 to remove references to 'annual report' and replace the reference with 'fund information'. No changes are made to the operation of section 106. Section 106 provides the duty of superannuation trustees to notify the Regulator of significant adverse events. A significant adverse event occurs if it occurs before the trustee is required to provide fund information (within the meaning of the regulations) to members.
[Schedule 5, item 53, subsections 106(1A) and (2) of the SIS Act]

5.61 Part 3 of Schedule 5 to the Bill commences on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

Chapter 6: Location offset and producer offset for films

Outline of chapter

6.1 Schedule 6 to the Bill amends the ITAA 1997 to make changes to the location tax offset and producer tax offset to:

- increase the rate of the location tax offset from 16.5 to 30 per cent of the company's total qualifying Australian production expenditure on films;
- increase a company's minimum qualifying Australian production expenditure on a film from at least $15 million to $20 million:
- increase the minimum amount of total qualifying Australian production expenditure on a film per hour from $1 million to $1.5 million;
- include a minimum training expenditure requirement test which a company can be exempt from provided that certain conditions are met in relation to the establishment or upgrading of certain permanent Australian film infrastructure. Alternatively, a company can be exempt from the minimum training expenditure requirement if certain training program requirements for individuals working on the film are satisfied.
- include conditions to require some post, digital and visual effects for productions to be provided by Australian providers or through an Australian permanent establishment;
- enable the Arts Minister to request specific information in relation to the location tax offset; and
- add a new threshold category to the producer tax offset for productions spending a minimum of $35 million of qualifying Australian production expenditure for a season of a drama series.

Context of amendments

Location tax offset

6.2 The location tax offset is a refundable tax offset calculated by reference to qualifying Australian production expenditure incurred in making films. The tax offset is intended to support and develop the Australian screen industry by providing concessional tax treatment for Australian film expenditure.

6.3 Film production companies may be entitled to this offset for their film productions. For a company to qualify for the location tax offset, there are certain conditions which must be met. Among other production requirements, the current eligibility conditions include that the production is of a certain format and genre, the minimum total qualifying production expenditure threshold is met and the company carried out or made the arrangements for all the activities in Australia which were necessary for the making of the film.

6.4 The amendments modify and also introduce new eligibility conditions which must be satisfied for a film production company to qualify for the location tax offset, including the use of Australian providers of post, digital and visuals effect and minimum training requirements in recognition of the higher level of support provided under the changes.

6.5 Prior to the amendments, companies were eligible for the location tax offset at a rate of 16.5 per cent of their total qualifying Australian production expenditure on a film. Under the amendments this rate increases to 30 per cent of a company's total qualifying Australian production expenditure on the film.

6.6 Prior to the amendments, the amount of a company's minimum qualifying Australian production expenditure on a film was $15 million. Under the amendments, this increases to a minimum of $20 million. Where the film is a television series and it is applying for the location tax offset, it must meet an additional expenditure threshold specific to television series.

6.7 The minimum qualifying Australian production expenditure per hour threshold for television series increases under the amendments from $1 million to $1.5 million.

6.8 The Government recognises the need to provide a boost to the Australian film industry and incentivise large budget productions to be filmed in Australia. The location tax offset changes will maintain Australia's competitiveness in attracting international productions and investment in the Australian screen industry by offering higher concessions. Attracting international productions to Australia directly supports our local screen industry. It provides invaluable additional employment and development opportunities for Australian cast and crew, beyond what is available on domestic productions alone. This strengthens Australia's screen industry and its capacity to produce high-quality cultural content for Australian and international audiences.

Producer tax offset

6.9 The producer tax offset is a refundable tax offset calculated by reference to the qualifying Australian production expenditure incurred in making the film. A film production company may be entitled to this offset for their film production. The tax offset is intended to support and develop the Australian screen industry by providing concessional tax treatment for qualifying Australian production expenditure.

6.10 The amendments introduce an alternative means by which a film production company can access the producer tax offset if it produces drama series that satisfy the new per season qualifying Australian production expenditure threshold.

6.11 The Government recognised the need to add a new category for eligibility for the producer tax offset to support the production of long-form Australian drama series that have high budgets per season but due to the significant number of hours of content produced, they do not meet the existing per hour expenditure threshold.

Summary of new law

6.12 Schedule 6 to the Bill amends the ITAA 1997 to make changes to the location tax offset. These include to increase the rate of the location tax offset to 30 per cent, increase the minimum qualifying Australian production expenditure to $20 million and the per hours threshold for film expenditure to $1.5 million. Schedule 6 also includes new eligibility requirements for film training obligations and requires some post, digital and visual effects for productions to be provided by Australian providers or through an Australian permanent establishment of a foreign resident entity. The changes also include a power for the Arts Minister to request certain information. Schedule 6 to the Bill also introduces a new threshold category to the producer tax offset for productions with a minimum qualifying Australian production expenditure of $35 million or more for a season of a drama series.

Comparison of key features of new law and current law

Comparison of new law and current law

New law	***Current law***
Location tax offset	
A 30 per cent rate applies for the location tax offset.	A 16.5 per cent rate applies for the location tax offset.
The qualifying Australian production expenditure per hour threshold for the location tax offset is $1.5 million.	The qualifying Australian production expenditure per hour threshold for the location tax offset is $1 million.

New law	***Current law***
The qualifying Australian production expenditure threshold for the location tax offset is $20 million.	The qualifying Australian production expenditure threshold for the location tax offset is $15 million.
To qualify for the location tax offset, a film production company must use one or more Australian providers to supply some of the post, digital and visual effects for the film production.	Not applicable.
To qualify for the location tax offset a film production company must satisfy a minimum training expenditure test or alternatively: • establish or upgrade certain permanent Australian film infrastructure in connection with the film; or • satisfy certain training program requirements for one or more individuals working on a training program that is provided to support the production of two or more films. A rule making power enables the Arts Minister to set additional eligibility requirements that apply for the location tax offset that require a film production company to meet minimum training program requirements or contribute to the broader workforce or infrastructure capacity of the sector.	Not applicable.
The Arts Minister may seek information by written notice from a film production company in relation to the location tax offset.	Not applicable.
Producer tax offset	
A season of a drama series also qualifies for the producer tax offset if: • qualifying Australian production expenditure for the season of the series is $35 million or more; • the season of the series contains two or more consecutive episodes that are produced wholly or principally for exhibition together under a single title;	Not applicable.

New law	***Current law***
• the season of a series is or will be exhibited to the public by television broadcasting or distributed to the public as a video recording; and • in the case of a season that is predominantly an animated image film the season is made in no more than 36 months or in the case of all other seasons that are not predominantly an animated image film, the principal photography for the season takes no more than 12 months.	

Detailed explanation of new law

Part 2 Location tax offset

Rate of location tax offset

6.13 Schedule 6 to the Bill increases the rate of the location tax offset from 16.5 per cent to 30 per cent for qualifying film production companies. This increase in the rate is intended to not only compensate for withdrawal of the location incentive grant of 13.5 per cent from 1 July 2023, but to also attract production activity to Australia and make Australia competitive when compared to other international jurisdictions.

[Schedule 6, items 1 and 2, paragraph 376-2(3)(b) and section 376-15 of the ITAA 1997]

Per hour production expenditure threshold

6.14 Schedule 6 to the Bill makes a number of changes to the requirements that must be met before the Arts Minister is required to issue a certificate to a film production company in relation to the location tax offset. One of these changes is to increase the per hour qualifying Australian production expenditure threshold required to be met. Under the amendment the threshold increases from $1 million to $1.5 million.

[Schedule 6, items 5 and 7, subsection 376-20(1), paragraph 376-20(3)(c) of the ITAA 1997]

Production expenditure threshold

6.15 Schedule 6 to the Bill increases the minimum qualifying Australian production expenditure threshold required to be met before the Arts Minister must issue a certificate to a film production company in relation to the location tax offset. Under the amendment the threshold increases from $15 million to $20 million.

[Schedule 6, item 8, paragraph 376-20(5)(a) of the ITAA 1997]

Australian or permanent establishment provider – post, digital and visual effects

6.16 Schedule 6 to the Bill sets out the eligibility requirements surrounding the use of resident entities for post, digital and visual effects production. To qualify for the location tax offset a film production company must enter into a contract with one or more Australian resident entities or foreign resident entities with a permanent establishment in Australia and a valid Australian Business Number, to supply some of the post, digital and visual effects in Australia for the film. Those services under the contract must have been provided to the film production company and at least part of the company's expenditure on the post, digital and visual effects production must be qualifying Australian production expenditure on the film.

6.17 Where the services are provided by an entity that is a foreign resident with an Australian permanent establishment, at least part of those services must have been provided through its Australian permanent establishment.

[Schedule 6, item 9, subsection 376-20(7) of the ITAA 1997]

6.18 The activities that a post, digital and visual effects provider/s must be contracted to carry out in Australia on the film are those that meet the definition of subsection 376-35(2) of the ITAA 1997.

6.19 There is no post, digital and visual effects expenditure threshold that productions have to meet, rather productions must engage with at least one of Australia's post, digital and visual effects providers to deliver eligible post, digital and or visual effects activities on the film in Australia.

[Schedule 6, item 9, subsection 376-20(7) of the ITAA 1997]

6.20 These requirements ensure that Australian providers or Australian permanent establishments of foreign resident entities supply at least some of these important services to film production companies and build and support the Australian post, digital and visual effects industry.

Minimum training expenditure requirement

6.21 Schedule 6 to the Bill includes a training expenditure requirement that must be met before the Arts Minister is required to issue a certificate to a film production company in relation to the location tax offset. This can be satisfied if the film

production company incurs qualifying Australian production expenditure on eligible training activities. Alternatively, a company may be eligible for an exemption from this requirement because the film production company:

- establishes or upgrades or is establishing or upgrading permanent film infrastructure in Australia; or
- invests in a qualifying training program to train individuals working on the film and the training program has or will support the production of two or more films in Australia.

[Schedule 6, item 9, subsection 376-20(8) of the ITAA 1997]

6.22 The minimum training expenditure requirement will be satisfied if a film production company incurs sufficient qualifying Australian production expenditure that meets certain requirements. The amount of expenditure must be at least the minimum training expenditure or a higher amount. The expenditure must be:

- qualifying Australian production expenditure that the company incurs on the film; and
- incurred for or reasonably attributed to the eligible training of one or more individuals that have worked or are working on the making of the company's film.

6.23 The principal means of fulfilling the training requirement is by incurring qualifying Australian production expenditure that must be reasonably attributed to the eligible training of one or more individuals that have worked or are working on the making of a film.

[Schedule 6, item 10, subsections 376-27(1) and (2) and paragraphs 376-27(3)(a) and (b) of the ITAA 1997]

6.24 Eligible training is defined by Schedule 6 as training or education provided in Australia that contributes to the knowledge, skills or experience of an individual in relation to the making of the film.

[Schedule 6, item 10, definition of eligible training in subsection 376-27(9) of the ITAA 1997]

Minimum training expenditure amount

6.25 Schedule 6 to the Bill provides that the minimum training expenditure amount is, for a film with a production start date:

- between 1 July 2024 but before 1 July 2025 – the lesser of $250,000 and 0.5 per cent of the film production company's total qualifying Australian production expenditure;

- on or after 1 July 2025 – the lesser of $500,000 and 1 per cent of the film production company's total qualifying Australian production expenditure.

6.26 Alternatively, if an amount has been prescribed by regulations for the purposes of determining the minimum training expenditure amount, then the minimum training expenditure for the relevant years is the lesser of the prescribed monetary amount and the prescribed per cent of the film production company's total qualifying Australian production expenditure.

6.27 Minimum training expenditure amount is defined by reference to the meaning given by subsection 376-27(6) of the ITAA 1997.

6.28 Total qualifying Australian production expenditure on a film (total qualifying Australian production expenditure) is defined for a company as the total of the company's qualifying Australian production expenditure on the film. This is the amount determined by the Arts Minister under section 376-30 of the ITAA 1997.

[Schedule 6, items 10 and 13, subsection 376-27(6), definition of total qualifying Australian production expenditure in subsection 376-27(9) of the ITAA 1997 and definition of minimum training expenditure amount in subsection 995-1(1)]

6.29 The regulation making power to prescribe the prescribed monetary amount and prescribed percentage for the purposes of the location tax offset is limited so that:

- the prescribed monetary amount must not exceed $750,000; and
- the prescribed percentage must not exceed 1 per cent of the film production company's qualifying Australian production expenditure for the relevant film.

6.30 Where the regulation making power is used it must prescribe both the prescribed monetary amount and the prescribed percentage. This is because if there is a need to prescribe an amount under the regulation making power both the amount and percentage would be expected to need to be adjusted.

6.31 Prescribed monetary amount and prescribed percentage are defined by reference to how they are calculated under paragraphs 376-27(7)(a) and (b) of the ITAA 1997 respectively.

[Schedule 6, item 10, subsections 376-27(7) and (8) and definition of prescribed monetary amount and prescribed percentage in subsection 376-27(9) of the ITAA 1997]

6.32 The new definitions and explanations introduced in Schedule 6 give effect to the policy intention for film production companies that receive support under the location tax offset to invest in the training of staff to contribute to the skills and capability of the Australian film industry.

Top up payments

6.33 Schedule 6 of the Bill provides flexibility for a film production company to meet part of the minimum training expenditure requirement, where that requirement would not otherwise be satisfied, by making a payment (top up payment) to an eligible provider that;

- offers tertiary courses or vocational education and training accredited courses; and
- the tertiary and vocational education and training accredited courses provide qualifications for work in the film industry.

6.34 The minimum training expenditure requirement is calculated as a percentage of a production's qualifying Australian production expenditure. Therefore, if the qualifying Australian production expenditure increases throughout the course of a production, so does the minimum training expenditure amount they have to meet to be eligible to claim the location tax offset.

6.35 The top up payment mechanism recognises that a shortfall in training expenditure may occur where there is an unexpected increase in qualifying Australian production expenditure late in production of a film resulting in an unexpected increase in the minimum training expenditure amount required to be met.

6.36 These top up payments made to eligible providers must be paid after the production commencement day and before either the making of the film ceases or the film production company's qualifying Australian production expenditure ceases to be incurred, whichever occurs earlier.

6.37 Production commencement day is defined as:

- for a film that is predominantly a digital animation or other animation, the day that the making of the film commenced;
- in any other case, the day that the principal photography commenced.

[Schedule 6, item 10, paragraph 376-27(3)(b), definition of eligible provider and production commencement day, subsection 376--27(9) of the ITAA 1997]

6.38 Top up payments to eligible providers must not be paid to an associate of the film production company. This condition ensures that payments of this nature are made at arm's length so that film production companies do not make a payment to benefit an associate of the film production company that is an eligible provider.

6.39 The amount of the payment to such training or education providers is capped at 50 per cent of the minimum training expenditure amount for the relevant film. This ensures that the principal means of fulfilling the training requirement is by incurring qualifying Australian production expenditure that the company incurs

on the film. The expenditure must be reasonably attributed to the eligible training of one or more individuals that have worked or are working on the making of the company's film. The top up payment mechanism provides an alternative means of qualifying for the training requirements and is intended to provide financial support to training and education providers that provide film industry training to support the quality of film training and education in Australia.

6.40 Such top up payments are subject to the existing rules concerning qualifying Australian production expenditure. Accordingly, where the payments are for training services and otherwise satisfy the other qualifying Australian production expenditure requirements, they will be qualifying Australian production expenditure. However, where the top up payment is made solely to enable the training expenditure requirement to be met and no goods or services are provided then the payment will not be qualifying Australian production expenditure.

[Schedule 6, item 10, subsections 376-27(1), (3), (4) and (5) and definition of eligible provider in 376-27(9) of the ITAA 1997]

6.41 The minimum training expenditure requirement ensures that film production companies that receive support under the location offset invest in the training of staff to contribute to the skills and capability of the Australian film industry.

[Schedule 6, item 10, definition of eligible training, subsection 376-27(1) of the ITAA 1997]

Alternatives to minimum training expenditure threshold – establishing permanent film infrastructure or training programs

6.42 The minimum training expenditure threshold requirement has two specific exemptions. These are the permanent film infrastructure exemption and the training programs exemption.

6.43 The permanent film infrastructure exemption is available to a film production company that has materially contributed to the establishment or upgrading of a piece of permanent film infrastructure in Australia. Film infrastructure refers to buildings or other physical structures that can be used for the making of films.

[Schedule 6, items 9 and 10, paragraph 376-20(8)(b) and subsection 376-28(2) of the ITAA 1997]

Infrastructure project exemption

6.44 An eligible infrastructure project must:

- have commenced or has continued to establish or upgrade film infrastructure after the commencement of the principal photography for

the film or the making of the film for a film that is predominantly a digital or other animation;

- be permanent and reasonable in the scale and cost determined by reference to the scale and cost of the film;
- be reasonably located having regard to the requirements of the Australian screen industry;
- materially contribute to alleviating capacity constraints in the Australian screen industry; and
- if the film infrastructure is still to be fully established or completed at the end of the production of the film, then it must be completed within a reasonable period after that time.

[Schedule 6, item 10, subsection 376-28(1) of the ITAA 1997]

Training programs exemption

6.45 The training programs exemption may be available to a film production company where one or more individuals (trainees) that have worked or are working on the making of the relevant film in Australia, has undertaken a training program. A substantial proportion of the activities in the making of the film must take place in Australia. An eligible training program must have:

- been provided for or is intended to be delivered to support training for two or more film productions in Australia;
- the training provided must have been funded by the film production company, or an associate of the film production company; and
- the period during which a trainee is undertaking the training program must overlap with at least part of the period of the principal photography for the relevant film or for a film that is predominantly a digital animation or other animation for at least some period during the making of the film.

6.46 The training program must have or will materially contribute to the making of the relevant film in Australia. In addition, the training program must have materially contributed to alleviating the capacity constraints in the Australian screen industry. This may be achieved by a variety of ways and eligibility is determined by the Arts Minister through the certification process based on the application of the location offset legislation, as provided for in the *Location Offset Rules 2018*.

6.47 In working out if a training program has materially contributed to alleviating the capacity constraints in the Australian screen industry, the following factors must be considered together with any other relevant matters:

- mentoring, industry partnerships and work experience placements facilitated by the training program;
- skills shortages in the Australian screen industry that are addressed by the training program;
- activities connected with the training program contribute to improvements in health and safety, diversity and inclusion in the Australian screen industry;
- any matters specified in rules made as a legislative instrument by the Arts Minister (following consultation with the Treasurer), including those related to the above matters.

[Schedule 6, item 10, section 376-29 of the ITAA 1997]

6.48 The Arts Minister assesses if the minimum training expenditure threshold as specified in the law has been met through the final certification process.

6.49 The exceptions to the minimum training expenditure threshold allow film production companies alternative pathways to meet the eligibility requirements of the location tax offset. The two exceptions available to a film production company, in relation to permanent infrastructure projects and training programs, encourage activities that alleviate skill and capacity constraints in the Australian film industry. Such projects and training programs support stability and continuity for the screen sector including encouraging increased economic investment, employment and skills development opportunities, technical innovation, growth opportunities for small and medium sized businesses and tourism gains. The training programs would also, where appropriate, provide opportunities in regional and remote Australia, for First Nations persons and persons with disabilities.

Information

6.50 The Arts Minister may require information from a film production company by providing a written notice to the company, prior to determining the qualifying Australian production expenditure for the location tax offset, and prior to the Minister issuing a certificate for a film.

6.51 The notice must request information the Arts Minister considers relevant to determine the film production company's qualifying Australian production expenditure, or for the assessment of the benefit of the film to the Australian screen industry.

6.52 The notice must include the period in which the film production company must provide the requested information to the Arts Minister, and this must be a minimum of 30 business days after the notice is given to the film production company. This time period for providing the requested information, may be extended by the Arts Minister upon request from the film production company.

6.53 Should the film production company fail to provide the requested information to the Arts Minister in the specified period (including any extension), the Arts Minister may refuse to determine the qualifying Australian production expenditure or issue a certificate for the film production company. A note is included in the legislation dealing with the issue of film certificates by the Arts Minister as a cross reference to the Arts Minister's power to require the provision of information about films prior to issuing a film certification.

6.54 The information gathering power allows the Arts Minister to accurately assess a film production company's qualifying Australian production expenditure, in addition to assessing the eligibility for the location tax offset.

[Schedule 6, items 6 and 11, note to subsection 376-20(1), section 376-32 of the ITAA 1997]

6.55 The Arts Minister may make a written delegation of their information gathering power to the Secretary of the Department administered by the Arts Minister or a Senior Executive Service (SES) employee or acting SES employee in the Department administered by the Arts Minister. This enables appropriate delegation of the information gathering power to be exercised by senior staff in the Arts Minister's Department.

[Schedule 6, item 12, paragraph 376-247(2)(ba) of the ITAA 1997]

Producer tax offset

Season of a drama series

6.56 Schedule 6 to the Bill introduces a new threshold category for a film production to enable a film production company to qualify for the producer tax offset.

6.57 The new threshold provides for film productions that are a season of a drama series. A film production must have qualifying Australian production expenditure on the film of $35 million or more per season. There is no per hour minimum qualifying Australian production expenditure threshold requirement that applies. This new category supports the production of long-form drama series that have significant qualifying Australian production expenditure over their season of the series but they do not satisfy the per hour qualifying Australian production expenditure requirement due to the large volume of hours they produce.

[Schedule 6, item 21, table item 7A of subsection 376-65(6) of the ITAA 1997]

6.58 The season of a drama series must satisfy certain conditions to establish eligibility including that it:

- is a season made up of two or more episodes that is or will be exhibited to the public by a television broadcasting service for which the

broadcasting service satisfies the requirements of the Broadcasting Services Act 1992;

- is distributed to the public as a video recording, whether that is on video tapes, digital video disks, or otherwise; and
- is or will be exhibited under a single title.

[Schedule 6, item 22, paragraphs 376-65(6B)(a) and (b) of the ITAA 1997]

6.59 There are maximum time limits for the principal photography of a season of a drama series that is seeking to access the producer tax offset under the new threshold. Where a season of drama series is predominantly a digital animation or other animation, the season seeking to access the producer tax offset must be made within a period of 36 months. The commencement of the 36 month period is not triggered by pilot production activities (if any). Due to the nature of digital or other animation series, they have a longer timeframe for completion.

6.60 A season of a drama series other than a season of a drama series which is predominantly a digital animation or other animation is subject to a different timeframe. Such a season of a drama series, most likely a 'live action', must complete all principal photography within a period of 12 months. This period again excludes activities associated with the production of a pilot episode (if any).

6.61 The time period in which the principal photography must be completed encourages the creation of a season of a drama series that meets the new threshold in a reasonable timeframe. This time period cap excludes productions that can only reach the minimum expenditure requirement over a longer time period (noting that digital or other animation allows a three-year period).

[Schedule 6, item 22, paragraph 376-65(6B)(c) of the ITAA 1997]

6.62 A season of a drama series can qualify for the producer tax offset under either the new eligibility criteria inserted by Schedule 6 or under existing table item 7 of subsection 376-65(6) of the ITAA 1997. Existing table item 7 of subsection 376-65(6) requires a $1 million minimum of qualifying Australian production expenditure and a minimum of $500,000 per hour expenditure. The existing law provides flexibility to ensure that higher per hour production cost drama series can continue to be supported by the producer tax offset in operation prior to the amendments as well as long-form drama series with lower per hour production costs to which Schedule 6 applies.

[Schedule 6, items 21and 22, subsections 376-65(6) and (6A) of the ITAA 1997]

6.63 The new category of 'season of a drama series' and the existing category of 'a documentary' require a production to meet the criteria of one of the categories, depending on the content of the production.

[Schedule 6, item 22, subsection 376-65(6) of the ITAA 1997]

Consequential amendments

6.64 Schedule 6 removes the reference to media in the guide to Division 376 so that the Australia film industry is more accurately referred to as the Australian screen industry.

[Schedule 6, item 4]

Commencement, application, and transitional provisions

Commencement

6.65 Schedule 6 commences on the first day of the first quarter after Royal Assent. ***[Clause 2]***

Application

6.66 The amendment to the increase in the rate of the location offset applies:

- for a film that is predominantly a digital animation or other animation—the making of the film; or
- otherwise—the principal photography for the film;

that commenced on or after 1 July 2023.

[Schedule 6, item 3]

6.67 Although, the amendment to the rate of the location tax offset applies retrospectively it is wholly beneficial for affected film production companies as the amendment enables qualifying companies to access a higher rate of the location tax offset.

6.68 The amendments to increase the per hours threshold, the Australian production expenditure threshold and the requirement to use one or more Australian entities for post, digital and visual effects apply:

- for a film that is predominantly a digital animation or other animation—the making of the film; or
- otherwise—the principal photography for the film;

commenced on or after 1 July 2023.

[Schedule 6, item 14]

6.69 The amendments in Schedule 6 to the Bill concerning the use of resident entities for post, digital and visual effects apply to post, digital and visual effects production provided on or after 1 July 2023 under a contract that has been entered into by the film company before, on or after 1 July 2023.

[Schedule 6, item 15]

6.70 The amendment that requires the use of resident entities or the Australian permanent establishment of foreign residents to provide some post, digital and visual effects applies retrospectively, however this requirement has been known to the industry and the public generally since the amendment was announced in the 2023-24 Budget. The industry has also been consulted on the amendments since the 2023-24 Budget announcement to ensure there is sufficient understanding of the new obligations and changes.

6.71 The amendments introducing the minimum training expenditure requirement apply to contracts entered into before, on or after commencement of this Schedule. However, the training requirement only applies:

- for a film that is predominantly a digital animation or other animation—the making of the film; or
- otherwise—the principal photography for the film;

that commenced on or after 1 July 2024.

6.72 An avoidance of doubt provision ensures that despite subsection 376-20(1) of the ITAA 1997 the training requirements only apply from 1 July 2024.

[Schedule 6, subitems 14(2) and (3) and item 16]

6.73 The amendments introducing the permanent film infrastructure exemption to the minimum training expenditure requirement apply to permanent film infrastructure for which the establishment or upgrading was completed on or after 1 July 2024.

[Schedule 6, item 17]

6.74 The amendments introducing the training programs exemption to the minimum training expenditure requirement, generally apply to a training program, undertaken by an individual on or after 1 July 2024. The incurring of training expenditure by a film production company or their associate on a training program relating to a trainee can occur before on or after 1 July 2024. However, the requirement that:

- the training program materially contribute to the making of the relevant film and that it will contribute to the making of two or more relevant films; and
- has materially contributed to alleviating Australian film industry capacity constraints can also occur in part prior to 1 July 2024.

[Schedule 6, item 18]

6.75 The amendments introducing the Arts Minister's information gathering power, apply in relation to information, which was obtained by a company before, on or after commencement of Schedule 6 to the Bill. Although, the amendments apply to information obtained by a company before the commencement of Schedule 6 to the Bill, the information request can only be made prospectively following commencement of Schedule 6 to the Bill. The provision applies to information held prior to commencement to ensure that relevant information concerning films that are currently in production can be obtained.

[Schedule 6, item 19]

6.76 The amendments introducing the new category for season of a drama series in the producer tax offset Bill apply:

- for a film that is predominantly a digital animation or other animation—the making of the film; or
- otherwise—the principal photography for the film;

commenced on or after 1 July 2024.

[Schedule 6, item 23]

Chapter 7: Statement of Compatibility with Human Rights

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

Table of Contents:

Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

Schedule 1 - Delivering better financial outcomes – reducing red tape

Overview

7.1 Schedule 1 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

7.2 Schedule 1 makes various amendments to the *Corporations Act 2001* (Corporations Act), the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and other Acts to increase accessibility and affordability of personal financial advice by improving the experience for consumers and removing unnecessary regulatory red tape. It implements the Government's response to the following recommendations of the Quality of Advice Review:

- recommendation 7: clarifying the legal basis in the SIS Act for superannuation trustees to charge individual members for financial advice from their superannuation account, and clarify associated tax consequences under the *Income Tax Assessment Act 1997* (ITAA 1997) [see Part 1 of Schedule 1];
- recommendation 8: streamlining ongoing fee renewal and consent requirements, including removing the requirement to provide a fee disclosure statement, in the Corporations Act [see Part 2 of Schedule 1];

- recommendation 10: providing more flexibility on how Financial Services Guide (FSG) requirements can be met under the Corporations Act [see Part 3 of Schedule 1];
- simplifying and clarifying the provisions governing conflicted remuneration in the Corporations Act, including:
  - recommendations 13.1 and 13.3: clarifying that monetary or non-monetary benefits given by a client are not conflicted remuneration along with the removal of consequential exceptions [see Part 4 of Schedule 1];
  - recommendation 13.2: introducing a specific exception to the conflicted remuneration provisions that permits a superannuation fund trustee to pay a fee for personal advice where the member requests the trustee to pay the fee from their superannuation account [see Part 4 of Schedule 1];
  - recommendation 13.4: removing the exception to conflicted remuneration rules for the issue of financial products where advice has not been provided in the previous 12 months [see Part 4 of Schedule 1];
  - recommendation 13.5: removing the exception to conflicted remuneration rules for agents or employees of Australian ADIs [see Part 4 of Schedule 1]; and
- recommendations 13.7 to 13.9: introducing new standardised consent requirements for life risk insurance, general insurance and consumer credit insurance commissions [see Part 5 of Schedule 1].

7.3 These reforms are part of the Government's Delivering Better Financial Outcomes reform package as announced in the Assistant Treasurer's press release *Delivering better financial outcomes - roadmap for financial advice reform* of 13 June 2023.

Human rights implications

7.4 Schedule 1 to the Bill may engage the following rights:

- Article 14 of the ICCPR – the right to a fair hearing and criminal process rights, including the presumption of innocence;
- Article 15 of the ICCPR – prohibition against retrospective criminal laws.

Right to a fair hearing

7.5 Part 7.7 of the Corporations Act imposes a range of disclosure obligations on entities – including individuals – that provide financial services. This includes obligations to provide FSGs to retail clients. A range of criminal and civil penalties apply for failing to comply with those disclosure obligations.

7.6 Part 3 of Schedule 1 introduces an alternative method for financial service providers to meet their FSG disclosure obligations – namely, by making the relevant disclosure information publicly available on their website. Comparable penalties will apply for failing to comply with these alternative disclosure obligations, consistent with the existing disclosure regime for FSGs.

Right to be presumed innocent – strict liability offences

7.7 Part 3 of Schedule 1 engages the right to a fair trial, as well as the presumption of innocence in Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR). Article 14 of the ICCPR provides that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(2) of the ICCPR recognises that all people have the right to be presumed innocent until proven guilty according to the law.

7.8 Strict liability offences engage with this right as they involve the imposition of criminal liability without a mental fault element. However, strict liability offences are compatible with the presumption of innocence if they are reasonable, necessary and proportionate and in pursuit of a legitimate objective.

7.9 Under the existing FSG disclosure regime, a financial service provider is liable for a strict liability offence if the FSG fails to comply with certain requirements or is otherwise defective. Schedule 1 amends the existing strict liability offences in Part 7.7 of the Corporations Act to also apply to the website disclosure option, as follows:

- if the financial service provider gives a defective FSG to the client or makes defective website disclosure information publicly available (existing strict liability section 952E – two years imprisonment);
- if the licensee provides a defective FSG or defective website disclosure information to their authorised representative, where the authorised representative is providing financial services to retail clients under the authority of the licensee (existing strict liability section 952G – two years imprisonment);
- if the FSG or website disclosure information does not show the date it was prepared or last updated (existing strict liability section 952I – 30 penalty units apply).

7.10 Under the existing FSG disclosure regime, a person is not liable for strict liability offences under sections 952E and 952G if they took reasonable steps to ensure that the disclosure document/information would not be defective. This also applies to the new website disclosure option.

7.11 Strict liability offences are appropriate in this circumstance, as it is necessary to strongly deter misconduct that can have serious detriment for consumers. The purpose of the existing FSG disclosure regime is to ensure consumers have access to important information before they engage the services of a financial service provider, so that consumers can make an informed choice about whether or not to obtain financial service(s) from that provider. This includes important information about the remuneration and any benefits the financial service provider receives (if any) in connection with the financial services they provide, as well as details about the provider's internal and external dispute resolution procedures (and how to access them).

7.12 It is vital for this disclosure information to be complete, accurate and up to date, irrespective of whether it is provided to the consumer via the existing FSG disclosure regime or the new website disclosure option. Applying these existing strict liability offences for defective FSGs to the new website disclosure option ensures financial service providers must continue to take reasonable steps to ensure that the FSG disclosure information they provide to consumers is complete, accurate and up to date.

7.13 Having strict liability apply to these offences also reduces non-compliance by ensuring that regulators can efficiently and expeditiously deal with low-level offending. This in turn bolsters the integrity of the regulatory regime enforced by ASIC and maintains public confidence in the regime.

7.14 The application of strict liability, as opposed to absolute liability, preserves the defence of honest and reasonable mistake of fact to be proved by the accused on the balance of probabilities. This defence maintains adequate checks and balances for persons who may be accused of such offences.

7.15 Given the potential for serious detriment to consumers in relying on defective disclosure information, this obligation is a reasonable and proportionate means of achieving the legitimate objective of ensuring consumers have access to accurate and up to date disclosure information to help them make informed choices about engaging the services of a financial service provider.

Criminal process rights ‑ civil penalties

7.16 Civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR. Although there is a domestic law distinction between criminal and civil penalties, 'criminal' is separately defined in international human rights law. Therefore, when a provision imposes a civil penalty, it is necessary to determine whether or not the penalty amounts to a 'criminal' penalty for the purposes of Articles 14 and 15 of the ICCPR.

7.17 The civil penalty provisions contained in Schedule 1 are not 'criminal' for the purposes of human rights law. While a criminal penalty is deterrent or punitive, these provisions are regulatory and disciplinary, and they aim to encourage compliance with the Schedule. Further, the provisions do not apply to the general public, but to a sector or class of people – financial service providers – who should reasonably be aware of their obligations under the Corporations Act. Therefore, imposing these civil penalties will enable an effective disciplinary response to non-compliance.

7.18 The maximum civil penalty amounts that can be imposed under Schedule 1 are intentionally significant and are in line with the penalties for other provisions in the broader financial services disclosure regime in the Corporations Act. The maximum financial sanction that the court may order for a contravention of a civil penalty provision is the greater of 5,000 penalty units, or if the court can determine the benefit derived and the detriment avoided because of the contravention – three times that amount.

7.19 While these civil penalties are large, they are appropriate in size. The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* outlines that larger penalties are more appropriate for bigger companies, as they provide an adequate deterrent.

7.20 Further, the judiciary continues to have discretion to consider the seriousness of the contravention and impose a penalty that is appropriate in the circumstances. The civil courts are experienced in making civil penalty orders at appropriate levels having regard to the maximum penalty amount, taking into account a range of factors including the nature of the contravening conduct and the size of the organisation involved.

7.21 Therefore, a relevant consideration in setting a civil penalty amount is the maximum penalty that should apply in the most egregious instances of non-compliance with the Schedule.

7.22 Finally, there is no sanction of imprisonment for non-payment of these civil penalties.

Prohibition against retrospective criminal laws

7.23 Article 15 of the ICCPR prohibits retrospectively making any act or omission a criminal offence or making an existing offence retrospectively subject to a heavier penalty. This human right is wide enough to prohibit retrospectively expanding the range of cases covered by an existing offence.

7.24 Division 2 of Part 1 of Schedule 1 makes amendments to the ITAA 1997 to ensure that financial advice fees charged under section 99FA of the SIS Act:

- are tax-deductible for the fund; and
- are not treated as superannuation benefits of the member.

7.25 The amendments made by Division 2 apply retrospectively, in relation to the 2019-20 income year and later income years.

7.26 Those amendments in Division 2 which ensure tax-deductibility of financial advice fees charged under section 99FA of the SIS Act only apply to complying superannuation fund (CSF) and non-complying superannuation fund (N-CSF) entities. They do not apply to individuals, therefore do not engage human rights.

7.27 The other amendments in Division 2 – those which ensure financial advice fees charged under section 99FA of the SIS Act are not treated as superannuation benefits of the member – will affect individuals. These amendments are advantageous to individual members of superannuation funds, ensuring that those financial advice fees are not taxable in the hands of that member.

7.28 While these amendments apply retrospectively, a person cannot be subject to penalties for any act or omission that occurred prior to commencement of Schedule 1. Therefore, Schedule 1 does not engage the prohibition on retrospective sanctions for any act or omission that did not constitute a contravention at the time it took place.

Conclusion

7.29 Accordingly, to the extent that Schedule 1 to the Bill engages with the rights under Articles 14 and 15 of the ICCPR, it is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* as the limitations are appropriate, proportionate and achieve a legitimate objective.

Schedule 2 – Petroleum resource rent tax anti-avoidance rules

7.30 The PRRTA Act anti-avoidance provisions apply to arrangements which artificially reduce assessable receipts or increase deductible expenditure. Assessable receipts and deductible expenditure are core components in working out a person's PRRT liability under the PRRTA Act and the PRRTA Regulations. The PRRTA Act anti-avoidance provisions apply to the PRRTA Act and the PRRTA Regulations.

Overview

7.31 Schedule 2 to the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

7.32 Schedule 2 to the Bill implements Recommendation 9 of the Gas Transfer Pricing Review, which recommends the PRRTA Act anti-avoidance provisions be updated to be consistent with the ITAA 1936 general anti-avoidance rules (GAAR).

7.33 The GAAR was updated in 2013 to address weaknesses that were revealed due to a number of unfavourable court cases, where taxpayers successfully argued that a 'tax benefit' was not obtained on the basis that without the scheme, they would not have entered into an arrangement that attracted tax.

Human rights implications

7.34 Schedule 2 to the Bill does not engage any of the applicable rights or freedoms.

Conclusion

7.35 Schedule 2 to the Bill is compatible with human rights as it does not raise any human rights issues.

Schedule 3 - Capital allowances for mining, quarrying or prospecting rights and clarifying the meaning of exploration for petroleum

Overview

7.36 Schedule 3 to the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

7.37 Schedule 3 to the Bill amends the PRRTA Act to clarify the meaning of 'exploration for petroleum'. Additionally, amendments to the ITAA 1997 clarify:

- that MQPRs cannot be depreciated for income tax purposes until they are used, not merely held, and

- the circumstances in which the issue of new rights over areas covered by existing rights lead to income tax adjustments.

Human rights implications

7.38 Schedule 3 to the Bill does not engage any of the applicable rights or freedoms.

7.39 Item 9 of Part 2 to Schedule 3 to the Bill ensures that the amendments to section 37 do not make a person criminally liable in respect of acts or omissions of the person before the day on which the amendments commence, if the person would not have been so liable had those amendments not been enacted. This provision is consistent with the intention that the amendments, on their own, should give rise to any retrospective criminal liability. ***[Schedule 3, Part 2, item 9]***

Conclusion

7.40 Schedule 3 to the Bill is compatible with human rights as it does not raise any human rights issues.

Schedule 4 - Multilateral development banks

Overview

7.41 Schedule 4 to the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

7.42 Schedule 4 to the Bill amends the ADB Act, EBRD Act and IMA Act 1947 to streamline the process under which amendments to the ADB Agreement, EBRD Agreement, IBRD Agreement and IMF Agreement are incorporated into domestic legislation. Consistent with modern drafting practice, the amendments incorporate the agreements into legislation by reference. This will ensure any future amendments to the agreements are automatically incorporated, including amendments currently being progressed to the EBRD Agreement and IBRD Agreement.

Human rights implications

7.43 Schedule 4 to the Bill does not engage any of the applicable rights or freedoms.

Conclusion

7.44 Schedule 4 to the Bill is compatible with human rights as it does not raise any human rights issues.

Schedule 5 - Miscellaneous and technical amendments

Overview

7.45 Schedule 5 to the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

7.46 Schedule 5 to the Bill makes a number of minor and technical amendments to Treasury portfolio legislation. The amendments demonstrate the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.

7.47 Parts 1 and 3 of Schedule 5 amend the Corporations Act and the SIS Act. Part 2 of Schedule 5 amends taxation laws. The amendments repeal inoperative provisions, simplify provisions, clarify intended outcomes and reduce red tape.

Human rights implications

7.48 Schedule 5 to the Bill does not engage any of the applicable rights or freedoms.

Conclusion

7.49 Schedule 5 to the Bill is compatible with human rights as it does not raise any human rights issues.

Schedule 6 - Location offset and producer offset for films

Overview

7.50 Schedule 6 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

7.51 Parts 1 and 2 amends the location tax offset provisions in Division 376 of ITAA 1997 to increase the tax offset amount from 16.5 per cent to 30 per cent, to raise the minimum qualifying Australian production expenditure thresholds from $15 million to $20 million and the per hours threshold from $1 million to $1.5 million. This amendment also includes conditions for a production to establish eligibility of the location tax offset, which includes a rule making power to set out minimum training obligations and contribution to the broader workforce or infrastructure capacity of the sector. The Schedule also requires film production companies to have used one or more Australian providers to deliver postproduction, digital and visual effects to qualify for the location tax offset.

7.52 Part 3 amends the ITAA 1997 to make changes to the producer tax offset to allow a film production company to also qualify for the producer tax offset by spending a minimum of $35 million of qualifying Australian production expenditure for a season of a drama series. The expenditure must be made over a maximum period of 12 months of production or 36 months for an animated image film series.

Human rights implications

7.53 This Schedule does not engage any of the applicable rights or freedoms. This amendment mainly consists of amending taxation legislation to increase thresholds and require other contributions to the film industry and does not impede or specifically promote any human rights. While this measure does provide that a film production company must satisfy compulsory minimum training obligations or contribution to the broader workforce or film infrastructure, it does not impede or promote the right to education. This is because the requirement to provide minimum training or contribute to the broader workforce or film infrastructure only requires a film production company to meet minimum training standards to be eligible for the location tax offset.

Conclusion

7.54 This Schedule is compatible with human rights as it does not raise any human rights issues.