

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

A New Tax System (Goods and Services Tax) Act 1999
Income Tax Assessment Act 1997
Taxation Administration Act 1953
Banking Act 1959

Treasury Laws Amendment (2016 Measures No. 3) Regulation 2016

Section 177-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), section 909-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), section 18 of the *Taxation Administration Act 1953* (TAA) and section 71 of the *Banking Act 1959* (Banking Act) provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

Schedule 1 to the *Treasury Laws Amendment (2016 Measures No. 3) Regulation 2016* (the Regulation) amends the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations) to add the statutory insurance scheme legislated under the *Building and Construction Commission Act 1991 (Qld)* (Queensland Home Warranty Scheme) to the list of statutory compensation schemes.

The purpose of Schedule 1 to the Regulation is to recognise the Queensland Home Warranty Scheme as a statutory compensation scheme to ensure that insurance premiums and settlements under the scheme are subject to the special rules that apply to insurance premiums and settlements under Division 78 of the GST Act.

Schedule 1 to the Regulation gives effect to this by amending Schedule 10 of the GST Regulations to add the Queensland Home Warranty Scheme to the list of statutory compensation schemes.

Schedule 2 to the Regulation updates the information requirements for farm management deposits (FMDs) as a result of recent changes to the taxation law concerning FMDs. To give effect to this, the Regulation prescribes the types of natural disaster relief and recovery arrangements that enable FMDs to be withdrawn within 12 months without affecting the income tax deduction for deposits.

The purpose of Schedule 2 to the Regulation is to revise and remake regulations for FMDs previously contained in the *Income Tax (Farm Management Deposits) Regulations 1998* (FMD Regulations 1998) prior to their sunset in 2019, to give effect to recent changes to the law concerning FMDs and make a consequential change to the *Banking Regulations 1966*.

Consultation on Schedule 1 to the Regulation was undertaken with affected states and territories. Public consultation was undertaken on Schedule 2 to the Regulation.

Details of the Regulation are set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The GST Act, ITAA 1997, TAA and Banking Act do not specify any condition that must be met before the power to make the Regulation may be exercised.

Schedule 1 to the Regulation commences on the later of the day after registration on the Federal Register of Legislation and the day on which the Queensland Home Warranty Scheme becomes a statutory compensation scheme.

Schedule 2 to the Regulation commences the day after its registration on the Federal Register of Legislation.

Details of the Treasury Laws Amendment (2016 Measures No. 3) Regulation 2016

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Treasury Laws Amendment (2016 Measures No. 3) Regulation 2016* (the Regulation).

Section 2 – Commencement

This section provides that each provision of the Regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Schedule 1 to the Regulation commences on the later of the day after the Regulation is registered and the commencement of section 36 of Part 2 of the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014*. It does not commence at all if section 36 of the aforementioned Act does not commence.

Schedule 2 to the Regulation commences the day after registration of the Regulation on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulation is made under the *A New Tax System (Goods and Services Tax) Act 1999*, the *Income Tax Assessment Act 1997*, the *Taxation Administration Act 1953* and the *Banking Act 1959*.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other time in a Schedule to this instrument has effect according to its terms.

Schedule 1 - QLD home warranty scheme

The Regulation amends Schedule 10 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations) to add the statutory insurance scheme legislated under the *Building and Construction Commission Act 1991 (Qld)* (Queensland Home Warranty Scheme) to the list of statutory compensation schemes to ensure the special rules that apply to insurance policies and to payments or supplies made in settlement of a claim under those policies apply to it.

The Queensland Home Warranty Scheme currently insures residential building work undertaken in Queensland.

The Queensland *Building and Construction Commission Act 1991*, governing the Queensland Home Warranty Scheme, has been amended (with the amendments to take effect upon proclamation). The amendments will have the effect of including the existing insurance arrangements (that are on the same or similar terms and conditions) in legislation by including them in the *Queensland Building and Construction Commission Regulations 2003*. Under the existing insurance arrangements the terms and conditions are included in insurance policy contracts.

Once these changes come into effect, the Queensland Home Warranty Scheme will be considered to be a statutory compensation scheme for GST purposes. This will occur at the later of the registration of the Regulation and when the amendments to the *Queensland Building and Construction Commission Act 1991* giving effect to the changes to the scheme are proclaimed.

Division 78-E of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) ensures that the special rules that apply to insurance policies and to payments or supplies made in settlement of a claim apply to statutory compensation schemes if they are prescribed in the GST Regulations. Regulation 78-105.01 of the GST Regulations enables statutory compensation schemes to be prescribed in Schedule 10 of the GST Regulations. This ensures that prescribed statutory compensation schemes are treated consistently with other insurance products.

Schedule 1 to the Regulation ensures that the special rules for insurance contained in Division 78 of the GST Act apply to the Queensland Home Warranty Scheme by including it in Schedule 10 of the GST Regulations.

Schedule 1 to the Regulation commences at the later of the time at which the Queensland Home Warranty Scheme becomes a statutory compensation scheme and the day after registration of the Regulation. This ensures that Division 78 of the GST Act continues to apply to new insurance policies and to payments or supplies made in settlement of a claim under policies for the Scheme.

Schedule 2 - Farm management deposits

The purpose of Schedule 2 to the Regulation is to revise and remake regulations for farm management deposits (FMDs) previously contained in the *Income Tax (Farm Management Deposits) Regulations 1998* (FMD Regulations 1998) prior to their sunsetting in 2019. It repeals the FMD Regulations 1998 and moves the provisions previously contained in the regulations into the *Income Tax Assessment Regulations 1997* (ITAR 1997) and to the *Taxation Administration Regulations 1976* (TAR 1976).

Schedule 2 to the Regulation also makes consequential changes to the existing information requirements as a result of recent changes to the taxation law by the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* (Act) concerning FMDs.

The Act extended the natural disaster circumstances in which primary producers can withdraw an amount held in an FMD within 12 months of deposit in the income year following deposit, without affecting the income tax treatment of the FMD in the earlier income year. The natural disaster circumstances are extended to include severe drought.

The Act amended the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Taxation Administration Act 1953* (TAA) to enable FMDs to be used to offset loans or other debts relating to the FMD owner's primary production business. The Act also amended the TAA to impose an administrative penalty in circumstances where an FMD is applied to reduce interest on a non-qualifying loan such as a non-primary production business or private loan.

As a result of the changes to FMD arrangements in the Act, consequential changes are also made by Schedule 2 to the Regulation to ensure that FMD depositors are fully informed when making deposits. Accordingly, the regulation requires FMD providers

to inform depositors of FMDs that, although FMDs can be used to offset loans, a 200 per cent administrative penalty may apply if an FMD is offset against a non-primary production business loan. Schedule 2 to the Regulation also ensures that the information provided to FMD depositors includes an explanation of potential eligibility to withdraw an FMD amount within 12 months in severe drought situations. Schedule 2 to the Regulation also updates the information provided to depositors concerning the security of money held in FMDs by requiring information about the Financial Claims Scheme to be provided to depositors. Schedule 2 to the Regulation updates a reference to the Natural Disaster Relief and Recovery Arrangements (NDRRA) concerning repayment in the event of a natural disaster to refer to the most recent NDRRA 2012 determination, version 2 of 29 October 2015. Both the current and prior versions of the determination are available on Emergency Management Australia's DisasterAssist website at www.disasterassist.gov.au/Pages/related-links/Natural-Disaster-Relief-and-Recovery-Arrangements.asp.

Schedule 2 to the Regulation remakes the FMD Regulations 1998, to reflect these changes to the taxation law concerning FMDs and also to consolidate the regulations and to update the regulations to reflect current drafting practices. Minor changes are also made to the text of the explanation of the information that must be provided to depositors and also provided by FMD providers to the Agriculture Secretary. These changes clarify and streamline the explanation of these information requirements. Schedule 2 to the Regulation remakes the FMD regulations under the ITAA 1997 and the TAA, achieving correspondence between the relevant sections of the ITAA 1997 and the relevant sections of the ITAR 1997. Schedule 2 to the Regulation also updates an out-of-date reference to 'the Secretary of the Department of Agriculture, Fisheries and Forestry' and make a consequential change to the *Banking Regulations 1966* to update a cross-reference from the FMD Regulations 1998 to the ITAR 1997.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (2016 Measures No. 3) Regulation 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulation:

- in Schedule 1 recognises the Queensland Home Warranty Scheme as a statutory compensation scheme to ensure that insurance premiums and settlements under the scheme are subject to the special rules that apply to insurance premiums and settlements under Division 78 of the *A New Tax System (Goods and Services Tax) Act 1999*.
- in Schedule 2 revises and remakes regulations for farm management deposits previously contained in the *Income Tax (Farm Management Deposits) Regulations 1998* prior to their sunset in 2019. The regulations are relocated to the *Income Tax Assessment Regulations 1997* and to the *Taxation Administration Regulations 1976*. Consequential changes are also made to the existing information requirements as a result of recent changes to the taxation law made by Schedule 3 to the *Tax and Superannuation Laws Amendment (2016 Measures No. 1) Act 2016* and to correct a cross-reference in the *Banking Regulations 1966*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.