

EXPLANATORY STATEMENT

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

Australian Securities and Investments Commission Act 2001

Retirement Savings Accounts Act 1997

Superannuation Industry (Supervision) Act 1993

Taxation Administration Act 1953

Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2024

The purpose of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2024* (the Amending Regulations) is to make miscellaneous and technical amendments to regulations in the Treasury portfolio including to laws with respect to corporations, superannuation and taxation. The amendments demonstrate the Government's commitment to the care and maintenance of Treasury portfolio legislation. The Amending Regulations repeals redundant provisions, updates legislative references and makes consequential amendments.

The following provisions provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act (collectively, the Authorising Acts): section 251 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), section 200 of the *Retirement Savings Accounts Act 1997*, section 353 of the *Superannuation Industry (Supervision) Act 1994* (SIS Act), and section 18 of the *Tax Administration Act 1953* (TAA 1953).

Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct errors and unintended outcomes, make technical changes, and improve the quality of Treasury portfolio legislation. The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax legislation. It has since been expanded to all Treasury legislation.

The Treasury consulted with the public on exposure draft legislation and explanatory materials from 30 January 2024 to 12 February 2024. During this period, five submissions were received regarding the proposed package of amendments. A number of suggestions were beyond the limited scope of the miscellaneous and technical amendments process. Other submissions received suggested drafting refinements on the exposure draft legislation and the exposure draft explanatory materials. These suggestions have been considered and incorporated where appropriate.

Details of the Amending Regulations are set out in [Attachment A](#).

The Authorising Acts do not specify any conditions that need to be satisfied before the power to make the Amending Regulations may be exercised.

A statement of Compatibility with Human Rights is at Attachment B.

The Office of Impact Analysis (OIA) has been consulted (OIA23-06217) and agreed that the proposals are unlikely to have a more than minor impact. As such, the preparation of an Impact Analysis (IA) is not required.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The amendments to the *Taxation Administration Regulations 2017* are not exempt from sunseting. The remaining amendments to the *Australian Securities and Investments Commission Regulations 2001*, *Retirement Savings Accounts Regulations 1997*, and *Superannuation Industry (Supervision) Regulations 1994* are exempt from sunseting under table items 9B, 56B, and 59A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Once the amendments are made, the Amending Regulations will be automatically repealed under section 48A of the *Legislation Act 2003*.

Sections 1 to 4, and Part 1 of Schedule 1 to the Amending Regulations commence on the day after the Regulations are registered.

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

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

Details of the Amending Regulations

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2024* (the Amending Regulations).

Section 2 – Commencement

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

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

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

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Miscellaneous and technical amendments

Legislative references below are made to Schedule 1 of the Amending Regulations unless otherwise specified.

Part 1 – Amendments commencing day after registration

Division 1 – Amendments to the *Australian Securities and Investments Commission Regulations 2001*

Item [1] – Regulation 1B

Item 1 repeals regulation 8B of the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations).

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

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

Prior to the amendments, regulation 8B of the ASIC Regulations prescribes the ‘Insolvency Practitioners Association of Australia’ for the purpose of subparagraph 203(1B)(b)(ii) of the ASIC Act, which has been renamed to the Australian Restructuring Insolvency and Turnaround Association. After the *Insolvency Law Reform Act 2016* transferred the disciplinary functions in relation to liquidators to ASIC, the provision became obsolete. There is no purpose in prescribing the Australian Restructuring Insolvency and Turnaround Association - a peak body for restructuring, insolvency, and turnaround professionals, and the provision is repealed.

Division 2 – Amendments to the *Superannuation Industry (Supervision) Regulations 1994*

Item [2] – Subregulation 1.03(1) (definition of *unfunded public sector superannuation scheme*)

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

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

Part 2 – Amendments commencing first day of next quarter

Division 1 – CDEP Scheme

Division 1 of Part 2 removes redundant references to the Community Development Employment Projects (CDEP) Scheme across subordinate legislation within the Treasury portfolio, including in the *Retirement Savings Accounts Regulations 1997* and the SIS Regulations.

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

Items [3] to [6] – Repeal of redundant legislative references related to the CDEP Scheme in the Retirement Savings Accounts Regulations 1997 and the SIS Regulations

Items 3 and 5 remove the references to the CDEP Scheme in the *Retirement Savings Accounts Regulations 1997* and the SIS Regulations respectively.

Items 4 and 6 include application provisions in the *Retirement Savings Accounts Regulations 1997* and the SIS Regulations respectively. The application provisions under the amendments ensure that any relevant CDEP payments that were made before the commencement of the amendments are not impacted by the amendments.

Division 2 – Amendments to the *Taxation Administration Regulations 2017*

Item [7] – Section 67 (table item 8)

Item 7 updates the name of the prescribed taskforce at table item 8 of the table in section 67 of the *Taxation Administration Regulations 2017* from ‘Black Economy Taskforce’ to ‘Shadow Economy Taskforce’. The amendment allows the lead taskforce agency, the ATO, to formally change the name of the taskforce without affecting the disclosure of protected information to the taskforce.

Section 67 of the *Taxation Administration Regulations 2017* contains a list of prescribed taskforces to whom the disclosure of protected information by taxation officers is allowed. Prior to the amendments, table item 8 of the table in section 67 listed the ‘Black Economy Taskforce’ as a prescribed taskforce. As a matter of practice, the name for this taskforce is the ‘Shadow Economy Taskforce’.

Part 3 – Amendments commencing at other times

Item [8] – Subregulation 5.01 (at the end of the definition of *superannuation system*) of the SIS Regulations

Item 8 makes a consequential amendment to support the operation of subsections 131-80(1) and (3) of Schedule 1 to the TAA 1953, which was inserted by *Treasury Laws Amendment (2023 Measures No. 3) Act 2023* and has not yet commenced.

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

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2024

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 purpose of the Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2024 (the Amending Regulations) is to make miscellaneous and technical amendments to regulations in the Treasury portfolio including to laws with respect to corporations, superannuation and taxation. The amendments demonstrate the Government's commitment to the care and maintenance of Treasury portfolio legislation.

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.