2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX AND SUPERANNUATION LAWS AMENDMENT (2014 MEASURES No. 7) BILL 2014
EXCESS EXPLORATION CREDIT TAX BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon J. B. Hockey MP)

Table of contents

Glossary 1

General outline and financial impact.. 3

Chapter 1 Fairer taxation of excess non-concessional contributions 11

Chapter 2 Transferring the tax investigation function to the Inspector-General of Taxation 31

Chapter 3 CGT exemption for compensation and insurance...53

Chapter 4 Greater certainty in relation to fund mergers 65

Chapter 5 Disclosing tax information relating to proceeds of crime orders 77

Chapter 6 Exploration development incentive...............................81

Chapter 7 Miscellaneous amendments.......................................131

Index...151

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
AAT	Australian Administrative Tribunal
ACC	Australian Crime Commission
ACCU	Australian carbon credit unit
ACLEI	Australian Commission for Law Enforcement Integrity
ATO	Australian Taxation Office
Bill	Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014
cap	non-concessional contributions cap
CGT	capital gains tax
Commissioner	Commissioner of Taxation
EDI	exploration development incentive
GDP	gross domestic product
GIC	General Interest Charge
GST	goods and services tax
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
IGT Act	*Inspector-General of Taxation Act 2003*
Inspector-General	Inspector-General of Taxation
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
ITTPA	*Income Tax (Transitional Provisions) Act 1997*
Ombudsman	Commonwealth Ombudsman
Ombudsman Act	*Ombudsman Act 1976*
PRRTAA	*Petroleum Resource Rent Tax Assessment Act 1987*

Abbreviation	***Definition***
PSSAP	Public Sector Superannuation Accumulation Plan
RSA	Retirement Savings Account
SES	Senior Executive Service
SIS Act	*Superannuation Industry (Supervision) Act 1993*
SISAA	*Superannuation Industry (Supervision) Amendment Act 2010*
TAA 1953	*Taxation Administration Act 1953*
TASA 2009	*Tax Agent Services Act 2009*
TIES	Tax Issues Entry System

General outline and financial impact

Fairer taxation of excess non-concessional contributions

Schedule 1 to the *Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014* (Bill) amends the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Taxation Administration Act 1953* (TAA 1953) to make the taxation treatment of individuals with excess non-concessional superannuation contributions fairer.

Date of effect: These amendments apply in the 2013-14 and later financial years. While these changes apply retrospectively, they ensure that no taxpayer need face a disproportionate penalty for exceeding their excess non-concessional cap after the date of announcement.

Proposal announced: This measure was announced in the acting Assistant Treasurer Media Release titled 'Superannuation excess contributions tax' of 13 May 2014.

Financial impact: The measure has a cost of $39.0 million over the forward estimates. This is primarily the result of the large reduction in excess non-concessional contributions tax revenue.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 1, paragraphs 1.76 to 1.83.

Compliance cost impact: This measure will impose low additional compliance costs on superannuation providers and individuals.

Summary of regulation impact statement

Regulation impact on business

Impact: Low.

Main points:

- Superannuation providers are already required to process release authorities for members with excess non-concessional contributions, although potentially on a slightly shorter timeframe.

- Individuals can choose to have their excess non-concessional contributions and 85 per cent of an associated earnings amount paid from their superannuation in accordance with a release authority issued by the Commissioner of Taxation. This choice is optional. However, individuals who make this choice will no longer face a disproportionate penalty on their excess non-concessional contributions.

Transferring the tax investigation function to the Inspector-General of Taxation

Schedule 2 to this Bill amends the *Inspector-General of Taxation Act 2003* by transferring the tax investigative and complaint handling function of the Commonwealth Ombudsman to the Inspector-General of Taxation (Inspector-General) and merging that function with the Inspector-General's existing function of conducting systemic reviews. This provides taxpayers with a specialised complaint handling process for taxation matters and aligns the systemic review role of the Inspector-General with the correlative powers and functions of the Ombudsman.

Date of effect: Schedule 2 to this Bill commences the later of the 14th day after this Bill receives Royal Assent or 1 May 2015.

Proposal announced: These amendments were announced in the 2014-15 Budget.

Financial impact: The Government will provide an additional $0.1 million over four years from 2014-15 to transfer the tax complaint function.

Human rights implications: This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.81 to 2.87.

Compliance cost impact: Nil.

CGT exemption for compensation and insurance

Schedule 3 to this Bill amends the ITAA 1997 to ensure that:

- a capital gains tax (CGT) exemption is available to certain trustees and beneficiaries who receive compensation or damages;

- a CGT exemption is available to trustees of complying superannuation entities for insurance policies relating to illness or injury; and
- the CGT primary code rule applies to capital gains and capital losses that are disregarded by complying superannuation entities arising from injury and illness insurance policies, life insurance policies and annuity instruments.

Date of effect: The amendments apply to the 2005-06 income year and later income years. The amendments are consistent with the administrative practice of the Commissioner of Taxation and ensure that taxpayers that could have benefited by relying on the Commissioner's administrative practice are not disadvantaged by this change.

Proposal announced: The Assistant Treasurer announced the Government would proceed with this measure in a Media Release titled *Integrity restored to Australia's taxation system* of 14 December 2013. The measure was first announced in the 2011-12 and 2012-13 Federal Budgets.

Financial impact: This measure is estimated to have a small but unquantifiable cost to revenue over the forward estimates period.

Human rights implications: This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — paragraphs 3.32 to 3.40.

Compliance cost impact: This measure has a low compliance cost impact as the changes give effect to how the taxation law is administered by the Commissioner of Taxation.

Providing certainty for superannuation fund mergers

Schedule 4 to this Bill amends the ITAA 1997 and ITTPA to ensure that individuals whose superannuation benefits are involuntarily transferred from one superannuation plan to another plan without their request or consent are not disadvantaged through the transfer. Schedule 4 to this Bill will also amend the TAA 1953 to remove the need for a roll-over benefit statement to be provided to an individual whose superannuation benefits are involuntarily transferred.

Date of effect: 1 July 2015.

Proposal announced: The Assistant Treasurer announced in a Media Release titled *Integrity restored to Australia's tax system* of 14 December 2013 that the Government would proceed with the measure announced by the previous government and contained in Media Release No. 69 of 22 October 2012 from the then Assistant Treasurer.

Financial impact: Nil.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.34 to 4.40.

Compliance cost impact: This measure will only have minor compliance costs for the superannuation industry as it reflects existing industry practice for the transfer of superannuation benefits through a fund merger arrangement. The measure also removes the unnecessary compliance burden for a transferring plan to give a roll-over benefit statement to each individual fund member, depositor or account holder affected by the transfer.

Disclosing tax information relating to proceeds of crime orders

Schedule 5 to this Bill amends the TAA 1953 to allow taxation officers to record or disclose protected information to support or enforce a proceeds of crime order. It also clarifies that all orders relating to unexplained wealth made under a state or territory law are included in the definition of 'proceeds of crime order'.

Date of effect: This measure applies to disclosures made on or after the date of Royal Assent.

Proposal announced: The measure has not previously been announced.

Financial impact: Nil.

Human rights implications: This Schedule raises a human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 5, paragraphs 5.14 to 5.19.

Compliance cost impact: Nil. This measure does not place any additional compliance costs on individuals or businesses.

Exploration development incentive

Schedule 6 to this Bill and the Excess Exploration Credit Tax Bill 2014 introduce an exploration development incentive by amending the ITAA 1997 and other tax legislation to provide a tax incentive to encourage investment in small mineral exploration companies undertaking greenfields mineral exploration in Australia. Australian resident investors of these companies will receive a tax incentive where the companies choose to give up a portion of their losses relating to their exploration expenditure in an income year.

The total value of the tax incentives available to taxpayers in respect of expenditure in an income year is restricted to $25 million for greenfields minerals expenditure incurred by eligible companies in 2014-15, $35 million for greenfields minerals expenditure incurred in 2015-16 and $40 million for greenfields minerals expenditure incurred in 2016-17.

The incentive is not available for expenditure incurred in income years after 2016-17.

Date of effect: This measure applies to expenditure in the 2014-15, 2015-16 and 2016-17 income years, allowing the distribution of exploration credits in the 2015-16, 2016-17 and 2017-18 income years.

Proposal announced: This measure was announced as part of the 2013 Federal Election in *The Coalition's Policy for Resources and Energy* (September 2013).

Financial impact: This measure will have the following financial impacts over the forward estimates period[1]:

2014-15	***2015-16***	***2016-17***	***2017-18***
–	–	–$25m	–$35m

Human rights implications: This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 6, paragraphs 6.235 to 6.242.

Compliance cost impact: The introduction of the exploration development incentive results in a small increase in compliance costs for small mineral exploration companies that choose to participate, estimated to be less than $100,000 per annum combined for all those companies that choose to participate.

[1] Financial impacts are in underlying cash balance terms.

Summary of regulation impact statement

Regulation impact on business

Impact: Small.

Main points:

- Small exploration companies have been finding it increasingly difficult to attract capital to undertake greenfields exploration and this has led to concerns about the sustainability of Australian mining in the medium and long term.
- Small exploration companies, with little income to offset against their deductible exploration expenditure, face a tax disadvantage relative to larger mining and exploration companies. They are also subject to significant risks and long delays from creation to discovery.
- The Government is delivering on its election commitment to introduce an exploration development incentive, which is expected to lead to additional investment in small exploration companies undertaking greenfields exploration in Australia and could lead to new mines.
- Exploration companies that choose to participate in the exploration development incentive will face small additional compliance costs as the scheme is voluntary and most of the information required to participate is broadly similar to that already reported by eligible companies.

Miscellaneous amendments

Schedule 7 to this Bill makes a number of miscellaneous amendments to the taxation and superannuation laws. These amendments are part of the Government's commitment to the care and maintenance of the taxation and superannuation systems.

These amendments include style changes, the repeal of redundant provisions, the correction of anomalous outcomes and corrections to previous amending Acts.

Date of effect: These amendments have various application dates that are explained in detail in this explanatory memorandum. While some of these amendments have retrospective application, taxpayers should not be adversely impacted.

Proposal announced: These amendments were released as an exposure draft for public consultation on 30 September 2014.

Financial impact: These amendments are expected to have a minimal or nil revenue impact.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 7, paragraphs 7.119 to 7.123.

Compliance cost impact: Negligible.

Chapter 1
Fairer taxation of excess non-concessional contributions

Outline of chapter

1.1 The Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 (Bill) amends the *Income Tax Assessment Act 1997* (ITAA 1997) and the *Taxation Administration Act 1953* (TAA 1953) to make the taxation treatment of individuals with excess non-concessional contributions fairer.

1.2 The amendments allow a choice for individuals to release from superannuation an amount equal to their superannuation contributions in excess of the non-concessional contributions cap (cap) plus 85 per cent of an associated earnings amount, with the full earnings amount included in the individual's assessable income and taxed at the individual's marginal tax rate. The individual will be entitled to a non-refundable tax-offset equal to 15 per cent of the associated earnings amount.

1.3 All references to legislative provisions in this chapter are references to the ITAA 1997 unless otherwise stated.

Context of amendments

1.4 Non-concessional contributions are, broadly, contributions made to a complying superannuation plan that are not included in the assessable income of the complying superannuation provider. Generally, these contributions are made out of after-tax income.

1.5 Earnings from investing non-concessional contributions receive concessional tax treatment (a rate of up to 15 per cent tax) in the complying superannuation plan. The treatment is viewed as concessional as most taxpayers are subject to personal marginal tax rates greater than 15 per cent on their assessable income.

1.6 Under the existing regime, an individual is liable for excess non-concessional contributions tax on non-concessional contributions that exceed the individual's non-concessional contributions cap. It is imposed at the top marginal tax rate to provide a strong deterrent for exceeding the cap. The annual cap for non-concessional contributions for the 2014-15

financial year is $180,000. For the 2013-14 and earlier financial years the cap was $150,000 per year. There is a rule which allows individuals under the age of 65 to 'bring forward' their cap for the next two years.

1.7 The excess non-concessional contributions tax limits the superannuation contributions that can be made in a financial year that receive concessional tax treatment.

1.8 The Commissioner of Taxation (Commissioner) must make an assessment of an individual's excess non-concessional contributions tax for a financial year, and give the individual a notice of assessment.

1.9 As soon as practicable after making the assessment, the Commissioner must give the person a release authority in respect of their excess non-concessional contributions tax liability, which they must give to a superannuation provider. A release authority requires the provider to pay amounts from an individual's superannuation interest. Released amounts are generally paid to the Commissioner in satisfaction of the individual's excess non-concessional contributions tax liability.

1.10 The Commissioner has discretion to disregard non-concessional contributions or allocate them to another financial year for the purposes of excess non-concessional contributions tax. Excess non-concessional contributions tax is not imposed on contributions that are disregarded. The discretion can only be exercised in special circumstances and consistent with the object of the excess non-concessional contributions tax regime.

1.11 Excess non-concessional contributions that do not have to be released to pay the tax remain in the individual's superannuation interest, and the earnings on investments made with those contributions continue to be taxed at concessional rates (up to 15 per cent) as assessable income of the superannuation provider.

1.12 The existing treatment of excess non-concessional contributions may be regarded as punitive as the tax is applied to the excess contribution rather than the tax benefit received on the excess contribution, and the tax is applied at the top marginal tax rate, regardless of the individual's marginal tax rate. The same treatment applies to both intentional and inadvertent breaches of the cap. This treatment can also be seen as double-taxation, because the contributions have generally been made out of the after-tax income of the contributor.

1.13 In the 2014-15 Budget, the Government announced that it would allow individuals the option of withdrawing superannuation contributions in excess of the non-concessional contribution cap made from 1 July 2013 and any associated earnings, with these earnings to be taxed at the individual's marginal tax rate.

1.14 This measure delivers on the Government's election commitment to develop an appropriate process that addresses inadvertent breaches of contribution caps where the error would result in a disproportionate penalty.

1.15 Excess concessional contributions made since 1 July 2013 have been taxable as assessable income of the individual at the individual's marginal tax rate. Concessional contributions are, broadly, contributions made to complying superannuation plans that are included in the assessable income of the superannuation provider. An excess concessional contributions charge is imposed to ensure that individuals who have excess concessional contributions do not receive an advantage compared to individuals who have not exceeded their concessional contributions cap. In addition, individuals have the option of withdrawing 85 per cent of their excess concessional contributions from their superannuation interest.

Summary of new law

1.16 The Bill provides that an individual who has non-concessional contributions in excess of their cap in the 2013-14 or later financial years can elect to release an amount equal to those excess contributions plus 85 per cent of an associated earnings amount for those contributions from their superannuation. The full associated earnings amount will be included in the individual's assessable income in the year the excess contribution arose and will be taxed at the individual's marginal tax rate. The individual will be entitled to a non-refundable tax-offset equal to 15 per cent of the associated earnings amount that is included in their assessable income.

1.17 Excess non-concessional contributions tax will not be imposed on excess contributions to the extent that they are released from superannuation, or where the value of an individual's remaining superannuation interests is nil. Excess non-concessional contributions tax will be imposed on excess non-concessional contributions that remain in a superannuation plan.

Comparison of key features of new law and current law

New law	*Current law*
Individuals can elect to release from their superannuation interest an amount equal to non-concessional contributions made in excess of their cap plus 85% of associated earnings for those excess contributions to avoid liability for excess non-concessional contributions tax. Amounts are released to the individual.	Individuals cannot elect to release non-concessional contributions made in excess of their cap and are liable for excess non-concessional contributions tax.
Excess non-concessional contributions tax is imposed at the top marginal tax rate on excess contributions not released from superannuation unless the Commissioner has directed that the value of an individual's superannuation interests is nil (which would prevent amounts no longer in superannuation from being treated as excess non-concessional contributions).	Excess non-concessional contributions tax is imposed at the top marginal tax rate on non-concessional contributions in excess of an individual's cap. Individuals must release an amount from superannuation equal to the excess non-concessional contributions tax liability.
The full associated earnings amount for contributions in excess of the individual's cap that are released from superannuation is included in the individual's assessable income and taxed at the individual's marginal tax rate in the year the excess contributions were made. The full associated earnings amount for the contributions in excess of the individual's cap is included in the individual's assessable income in the year the excess contributions were made where the Commissioner has directed that the value of an individual's superannuation interest is nil. The individual is entitled to a non-refundable tax-offset equal to 15% of the associated earnings amount included in their assessable income.	No earnings amount for the contributions in excess of the individual's cap is included in the individual's assessable income.

Detailed explanation of new law

1.18 The Bill amends the excess non-concessional contributions tax regime for the 2013-14 and later financial years so that an individual whose non-concessional contributions for a financial year exceed their non-concessional contributions cap can choose to have an amount equal to those excess contributions plus 85 per cent of an associated earnings amount released from their superannuation in accordance with a release authority issued by the Commissioner.

1.19 Excess non-concessional contributions tax will not be imposed on excess contributions to the extent that an amount of those excess contributions is released from a superannuation interest in accordance with a release authority issued by the Commissioner or where the Commissioner directs that the value of an individual's remaining superannuation interests is nil. This direction prevents any amounts no longer in superannuation from being treated as excess non-concessional contributions.

1.20 Excess non-concessional contributions tax will be imposed on excess non-concessional contributions that are not released from a superannuation interest where the remaining value of all the individual's superannuation interests is not nil.

1.21 Individuals will have the full amount of the associated earnings for released contributions included in their assessable income for the income year corresponding to the financial year of the excess contributions. If the contributions that exceed the cap are not released because the value of the individual's superannuation interests is nil, the individual will still have the full amount of the associated earnings for the excess contributions included in their assessable income. Individuals will be entitled to a non-refundable tax-offset equal to 15 per cent of the amount included in their assessable income.

1.22 There is no change to the amounts that are non-concessional contributions or to the way that an individual's non-concessional contributions cap is worked out. For example, the two year bring forward rule still applies for individuals aged under 65 years. The Commissioner also still has discretion to disregard non-concessional contributions or reallocate them to another financial year in special circumstances and where doing so is consistent with the object of the excess non-concessional contributions tax regime.

Excess non-concessional contributions determination and election

1.23 The Commissioner must make a written determination for individuals who have non-concessional contributions in excess of their cap for the financial year. The determination states the amount of the excess contributions, the amount of the associated earnings for those contributions, and the total release amount. The total release amount is the amount of the excess contributions plus 85 per cent of the associated earnings amount. The total release amount is the amount that may be released from the individual's superannuation interests. A notice of a determination is given to the individual. The Commissioner may amend the determination. **[*Schedule 1, item 44, section 97-25 of Schedule 1 to the TAA 1953*]**

1.24 Individuals who are notified of a determination can elect:

- to release the total release amount stated in the determination, that is, the amount of the excess contributions plus 85 per cent of the associated earnings amount, from superannuation;
- not to release any amount from superannuation because the value of all their superannuation interests is nil; or
- not to release any amount from superannuation for another reason.

[Schedule 1, item 26, subsection 96-7(1) of Schedule 1 to the TAA 1953]

1.25 The election notice must be provided to the Commissioner in the approved form. ***[Schedule 1, item 26, subsection 96-7(5) of Schedule 1 to the TAA 1953]***

1.26 If an individual elects to release the total amount, then the superannuation provider must release both the excess contribution and associated earnings amounts to the maximum extent possible. Only 85 per cent of the associated earnings amount must be released, as the superannuation provider may already have included the earnings on investments made with the excess contributions in the provider's assessable income and been taxed on those earnings (at a rate of up to 15 per cent). **[*Schedule 1, item 32, subsection 96-20(1A) of Schedule 1 to the TAA 1953*]**

1.27 Individuals cannot elect to release only a part of the total release amount stated in the determination. Individuals whose total superannuation interests are valued at less than the total release amount stated in the determination must still elect to release the total release amount to avoid excess non-concessional contributions tax.

1.28 The election, once made, is irrevocable for the total release amount stated in the determination. The election must be made by an individual in the approved form within 60 days of the date of issue of the determination or a further period allowed by the Commissioner. The Commissioner must be notified of the election. ***[Schedule 1, item 26, subsections 96-7(5) and (8) of Schedule 1 to the TAA 1953]***

1.29 An election to release the total release amount stated in the determination must specify one or more superannuation providers that hold an interest for the individual from which the total amount is to be released. Where more than one provider is specified the amount to be released from each provider must also be identified. ***[Schedule 1, item 26, subsection 96-7(4) of Schedule 1 to the TAA 1953]***

1.30 An individual may elect not to release an amount from superannuation because the value of all of their superannuation interests is nil. This may occur, for example, if the individual has met a condition of release and has received all of their superannuation as a superannuation lump sum benefit before the Commissioner issues the excess non-concessional contributions determination. If the individual does in fact have money in superannuation but still makes this election, the election is invalid and taken not to have been made. ***[Schedule 1, item 26, paragraph 96-7(1)(b) of Schedule 1 to the TAA 1953]***

1.31 An individual who has commenced a superannuation pension or income stream and continues to have an interest in such a pension or income stream is not taken to have superannuation interests with a value of nil. This is regardless of whether the pension or income stream can be commuted in order to pay a lump sum. This is also regardless of whether such a commutation (or partial commutation) in order to release an amount in accordance with a release authority issued in relation to an excess non-concessional contributions determination for this measure proves problematic or otherwise undesirable for the individual or the superannuation provider. An individual who has only a defined benefit interest is also taken to have a superannuation interest with a value greater than nil, regardless of whether or not the superannuation provider can release an amount from the interest in accordance with a release authority.

1.32 Regulations will be made to facilitate the release of money from superannuation interests.

1.33 An individual who receives a determination can elect not to release for another reason. This election will be irrevocable in relation to the total release amount stated in the determination. In these circumstances the individual’s amount of excess non-concessional contributions is the amount by which their non-concessional contributions for the financial year exceed their cap. The Commissioner will issue an

assessment to the individual for excess non-concessional contributions tax in this case. ***[Schedule 1, item 26, paragraph 96-7(1)(c) of Schedule 1 to the TAA 1953, item 8, section 292-85 of the ITAA 1997]***

1.34 If no election is made, then no amount can be released from superannuation. The individual's amount of excess non-concessional contributions is the amount by which their non-concessional contributions for the financial year exceed their cap. The Commissioner will issue the individual with an excess non-concessional contributions tax assessment. ***[Schedule 1, item 8, section 292-85 of the ITAA 1997]***

1.35 If a valid election to release the total release amount is made and the Commissioner gives notice to the individual that the superannuation provider did not release the amount specified, the individual will be able to make a further election to release the unreleased amount from another superannuation interest. This further election must be made within 60 days of the notice being issued or a further period allowed by the Commissioner. ***[Schedule 1, item 26, subsections 96-7(6) and (7) of Schedule 1 to the TAA 1953]***

1.36 Excess non-concessional contributions tax is not imposed where the amount released is equal to the amount of excess contributions. However, excess non-concessional contributions tax will generally be imposed where the full amount is not released from superannuation (unless the value of all of the individual's superannuation interests is nil). ***[Schedule 1, item 8, section 292-85 of the ITAA 1997]***

Associated earnings and offset

1.37 Individuals will have benefited from accruing earnings while the excess contributions remain invested in superannuation. Hence, an associated earnings amount calculated to approximate the amount earned from the excess contributions while they were held in superannuation is included in the individual's assessable income and hence specified in the excess non-concessional contributions determination. ***[Schedule 1, item 44, paragraph 97-25(1)(b) of Schedule 1 to the TAA 1953]***

1.38 Elections to release are for the total of the excess non-concessional contribution amount and 85 per cent of this associated earnings amount. This recognises that earnings within superannuation may already be taxed at a rate of up to 15 per cent. ***[Schedule 1, item 26, subsection 96-7(1) and item 44, subsection 97-25(1) of Schedule 1 to the TAA 1953]***

1.39 Where the amount of the excess contributions is released from superannuation or the Commissioner determines that the value of the individual's superannuation interests is nil, the associated earnings amount is included in the individual's assessable income. This removes a taxation benefit that would be obtained by making contributions in excess

of the cap despite having them released under this regime or otherwise being removed from superannuation. ***[Schedule 1, item 7, section 292-20 and subsection 292-25(1) of the ITAA 1997]***

1.40 The Commissioner will include 100 per cent of the associated earnings amount in the individual's assessable income in the year corresponding to the financial year the individual had non-concessional contributions in excess of their cap. The earnings amount is subject to tax at the individual's marginal tax rate. However, the individual is entitled to a tax-offset equal to 15 per cent of the associated earnings amount included in their assessable income to account for the tax liability of the superannuation provider on the earnings. This offset is not refundable. ***[Schedule 1, item 7, sections 292-20, 292-25 and 292-30 of the ITAA 1997]***

1.41 There may be circumstances where an individual elects to release the total release amount from superannuation but only part of the total release amount can be released and the value of the individual's superannuation interests is not nil. This may occur, for example, if the individual's only remaining superannuation interest is a defined benefit interest. In this case the amount of associated earnings included in the individual's assessable income will be calculated based on the amount of the excess contributions that are released. The individual will be entitled to a tax-offset equal to 15 per cent of the amount of associated earnings included in their assessable income. Excess non-concessional contributions tax will apply to the amount of the excess that cannot be released. ***[Schedule 1, item 7, sections 292-20, 292-25, 292-30 and 292-85 of the ITAA 1997]***

1.42 The associated earnings amount is calculated using an average of the General Interest Charge (GIC) rate for each of the quarters of the financial year in which the excess contributions were made and compounds on a daily basis. ***[Schedule 1, item 44, subsection 97-30(1) of Schedule 1 to the TAA 1953]***

1.43 Section 8AAD of the TAA 1953 specifies how GIC is calculated. The TAA 1953 sets the GIC rate as the 90 day bank bill rate plus a 7 per cent uplift factor. For the 2013-14 financial year the average GIC rate for the four quarters of the financial year is 9.66 per cent and the daily rate for the purposes of calculating the associated earnings amount is therefore 0.02646575 per cent.

1.44 An approximation is used for the calculation of this associated earnings amount to avoid the complexity that would be imposed on individuals and superannuation providers if calculations of actual earnings amounts on excess contributions for the actual period those contributions were in superannuation were required for this measure. Hence, the associated earnings calculated may be lower or higher than the actual

earnings from the investments made with excess non-concessional contributions by the superannuation provider.

1.45 As GIC is on average higher than average superannuation fund returns, it incorporates a small but appropriate disincentive for individuals to exceed their non-concessional contribution caps.

1.46 However, the Treasurer will be able to specify an alternative proxy rate that is lower than the default rate (or indeed a zero rate) for any specified contributions year. For example, this would allow the Treasurer the option of setting a lower rate, possibly zero, where superannuation funds on average have made significant losses, such as occurred during the global financial crisis. ***[Schedule 1, item 44, subsection 97-30(2) of Schedule 1 to the TAA 1953]***

1.47 The period the associated earnings amount is calculated for commences on 1 July of the financial year in which the excess contributions occurred (contributions year) and ends on the day that the Commissioner makes the first determination of excess non-concessional contributions for the relevant contributions year. This is similar to the period used for calculating the excess concessional contributions charge for excess concessional contributions. ***[Schedule 1, item 44, subsection 97-30(1) of Schedule 1 to the TAA 1953]***

Example 1.1: Associated earnings

Belinda's non-concessional contributions for the 2014-15 financial year exceed her non-concessional contributions cap by $100,000. The Commissioner issues Belinda an excess non-concessional contributions determination on 1 November 2015. The amount of associated earnings stated on the determination is calculated as follows:

> 0.02646575% × ($100,000 plus the sum of the earlier daily proxy amounts) for the 489 day period from 1 July 2014 until 1 November 2015.

For the purposes of this example the proxy rate for the 2013-14 financial year has been used as the rate for the 2014-15 financial year is not yet available.

The result of this formula is that the associated earnings equal $13,814.

The total release amount stated in the determination for Belinda is $111,741, being the excess amount of $100,000 plus 85 per cent of the $13,814 associated earnings. If Belinda elects to release the total release amount, her superannuation provider would pay her $111,741 in response to the release authority issued by the Commissioner.

The Commissioner will amend Belinda's 2014-15 income tax assessment to include $13,814 as extra assessable income which will be taxed at her marginal tax rate and she will be entitled to a non-refundable tax offset of $2,073. If Belinda's marginal tax rate for this income was 37 per cent and she was liable for the 2 per cent Medicare levy then she would pay overall $3,314 in extra income tax ($5,387 in tax on the earnings less the $2,073 tax offset).

1.48 Where the Commissioner issues a direction that the value of all of an individual's interests remaining in superannuation is nil, then the full amount of associated earnings stated in the determination will still be included in the individual's assessable income, subject to taxation at the individual's marginal tax rate and they will receive a non-refundable tax offset equal to 15 per cent of that earnings amount. This will ensure that the integrity of the measure is maintained in relation to the treatment of associated earnings amounts. ***[Schedule 1, item 7, sections 292-25 and 292-30 of the ITAA 1997]***

Release of amounts from superannuation

1.49 The Commissioner must issue one or more release authorities to either the superannuation providers that the individual specifies in their election or any other provider the Commissioner considers is holding a superannuation interest for the individual (or both). This will facilitate the release of as much of the total release amount stated in the determination as possible. Each release authority will state the amount to be released by the provider. ***[Schedule 1, item 29, section 96-12 of Schedule 1 to the TAA 1953]***

1.50 The release authority requires the provider to pay amounts from the individual's superannuation interests (other than from a defined benefit interest). Making payments from a superannuation interest to the individual could otherwise breach regulations that prevent the early release of superannuation (conditions of release). Regulations will be made to ensure that the release authority for this measure satisfies a condition of release.

1.51 A superannuation provider that receives a release authority must pay to the individual the lesser of the amount stated in the authority and the sum of the maximum amounts that can be released from interests it holds for the individual within 21 days of the date of issue of the release authority or a further period allowed by the Commissioner. The Commissioner may allow a longer period of time where it is fair and reasonable to do so taking into account all relevant circumstances. ***[Schedule 1, item 32, subsection 96-20(1A) of Schedule 1 to the TAA 1953]***

1.52 Where a superannuation provider has multiple interests for the individual and the value of those exceed the amount specified in the

release authority, the provider can determine which interests to release money from. The provider may seek instructions in this regard from the individual.

1.53 Where the superannuation provider specified in the release authority only holds a defined benefit interest for the individual, the provider does not have to pay any amount in compliance with the release authority. ***[Schedule 1, item 33, subsection 96-20(3) of Schedule 1 to the TAA 1953]***

1.54 Providers with defined benefit interests can voluntarily comply with the release authority to the extent that amounts can be released. ***[Schedule 1, item 36, subsections 96-25(2) and (3) of Schedule 1 to the TAA 1953]***

1.55 However, if no amount is released and the individual has a superannuation interest or interests with value greater than nil, then no associated earnings amount will be included in individual's assessable income and excess non-concessional contributions tax will apply. ***[Schedule 1, item 7, sections 292-20, 292-25, and 292-30 and item 8, section 292-85 of the ITAA 1997]***

1.56 The provider must notify the Commissioner of the amount released and any amounts unable to be released or that the provider does not need to comply with the release authority, because, for example, the superannuation interest is a defined benefit interest. The notification must be made in the approved form and within 21 days of the date of issue of the release authority or a further period allowed by the Commissioner. ***[Schedule 1, items 38, 39 and 40, section 96-35 of Schedule 1 to the TAA 1953]***

1.57 The provider must also notify the individual of an amount released within 21 days of the date of issue of the release authority or such further period as the Commissioner allows. A penalty applies for failing to comply with this requirement. The provider is not required to give information to the individual about any unsuccessful release. ***[Schedule 1, item 41, section 96-42 of Schedule 1 to the TAA 1953 and item 46, subsection 286-75(2) of Schedule 1 to the TAA 1953]***

1.58 The Commissioner will notify the individual if the provider did not release the full amount stated in the release authority. At the same time, the Commissioner will ask the individual to make a further election in respect of the unreleased amount. The individual may nominate another superannuation provider that holds an interest for them to which a release authority may be issued for the unreleased amounts or elect not to release the unreleased amount as the value of their remaining superannuation interests is nil. The individual must notify the Commissioner within 60 days of the date the Commissioner issues the notice of unsuccessful release. ***[Schedule 1, item 41, section 96-40, item 26, subsections 96-7(6) and 96-7(7) of Schedule 1 the TAA 1953]***

1.59 The proportioning rule (which requires superannuation benefits to be treated as made from particular components of a superannuation interest in proportion to the overall composition of the interest) does not apply to release amounts. This is consistent with payments made in accordance with other release authorities.

1.60 The amount paid to the individual by the superannuation provider in accordance with a release authority is a superannuation lump sum benefit of the individual, but the amount itself does not have income tax consequences for the individual as it is non-assessable non-exempt income. However an associated earnings amount is still included in the individual's assessable income. ***[Schedule 1, item 16, section 303-17 and item 7, sections 292-20 and 292-25 of the ITAA 1997]***

Example 1.2: Full release

In the 2014-15 financial year Reginald makes non-concessional contributions that result in him exceeding his non-concessional contributions cap by $100,000. The Commissioner determines that the associated earnings amount is $19,000. The Commissioner gives him a notice of excess non-concessional contributions determination stating his excess contributions amount of $100,000, an associated earnings amount of $19,000 and a total release amount of $116,150 ($100,000 plus 85 per cent of the associated earnings amount of $19,000).

Reginald makes a valid election to release the total release amount of $116,150 from his superannuation interests by notifying the Commissioner and specifying a superannuation provider that holds an interest for him.

The Commissioner issues Reginald's superannuation provider with a release authority requiring the provider to make a payment to Reginald of $116,150 from his superannuation interest.

That amount is paid to Reginald by his superannuation provider in compliance with the release authority. The amount is non-assessable non-exempt income in his hands.

The superannuation provider notifies the Commissioner and Reginald of the payment of $116,150 made in accordance with the release authority.

As a result of the release of the amount from his superannuation interest, Reginald no longer has excess non-concessional contributions, and so is not liable for excess non-concessional contributions tax. The associated earnings amount of $19,000 is included in his assessable income for the 2014-15 income year and taxed at his marginal tax rate. Reginald is also entitled to a non-refundable tax-offset of $2,850, being 15 per cent of $19,000.

Example 1.3: Partial release

In the 2014-15 financial year Archibald makes non-concessional contributions that result in him exceeding his non-concessional contributions cap by $100,000. The Commissioner determines that the associated earnings amount is $19,000. The Commissioner gives him a notice of excess non-concessional contributions determination stating his excess contributions amount of $100,000, an associated earnings amount of $19,000 and a total release amount of $116,150. The total release amount is the excess contributions amount of $100,000 plus $16,150 (85 per cent of the associated earnings amount of $19,000).

Archibald makes a valid election to release the total release amount of $116,150 by notifying the Commissioner and specifying a superannuation provider that holds interests for him.

The Commissioner issues a release authority to the specified superannuation provider which holds a defined benefit interest for Archibald as well as an accumulation interest. The maximum amount that can be released from the accumulation interest is $60,000. Archibald has no other superannuation interest with this or any other superannuation provider.

In compliance with the release authority the superannuation provider pays the $60,000 to Archibald. The provider does not have to release any amount from Archibald's defined benefit interest and does not do so. The provider notifies the Commissioner and Archibald of the amount released. The provider also notifies the Commissioner of the amount unable to be released and the reason the amount was unable to be released.

The Commissioner notifies Archibald that the full amount of the release authority issued has not been successfully released and asks Archibald to either:

- nominate another superannuation provider for release of the unpaid amount of $56,150, being the amount of the release authority issued less the amount that was released; or
- elect not to release the unpaid amount because the value of his superannuation interests is now nil.

Archibald cannot nominate another superannuation provider as he has no other superannuation interests. The value of his superannuation interests is not nil so Archibald cannot make that election. He notifies the Commissioner of this situation.

Archibald's amount of excess non-concessional contributions for the financial year is $40,000, being the excess contributions amount stated in the determination less the released amount. The Commissioner issues Archibald an assessment for excess non-concessional contribution tax on $40,000.

An associated earnings amount of $11,400 being the associated earnings amount for the $60,000 of excess contributions released, is included in Archibald's assessable income for the 2014-15 income year. He receives a non-refundable tax-offset of $1,170, being 15 per cent of the amount of associated earnings of $11,400 included in his assessable income. The amount of associated earnings included in Archibald's assessable income is calculated in the same way as the associated earnings amount stated in the determination, but uses the released amount instead of the amount of his excess contributions for the financial year. As a result, this amount is less than the $19,000 associated earnings amount originally calculated by the Commissioner.

Commissioner's direction if value of superannuation interests are nil

1.61 Individuals who make non-concessional contributions in excess of their cap for a financial year may have already been paid some or all their superannuation benefits by the time they receive a determination from the Commissioner.

1.62 Once those benefits are paid from the superannuation system, they no longer receive concessional tax treatment.

1.63 The Commissioner must make a direction if he is satisfied that the value of all the individuals remaining superannuation interests is nil following the release of any amount stated in an excess non-concessional contributions determination, or where the individual elects not to release any amount from superannuation because the value of their superannuation interests is nil. The direction will mean an individual will not have excess non-concessional contributions that will be subject to excess non-concessional contributions tax for the financial year to which the determination relates. ***[Schedule 1, item 15, section 292-467 and item 8, section 292-85 of the ITAA 1997]***

1.64 Subsection 33(3) of the *Acts Interpretation Act 1901* allows the Commissioner to revoke the direction. For example, the Commissioner may revoke the direction if he receives information after making the original direction from a superannuation provider that holds a superannuation interest for the individual.

1.65 Where this direction is made the full associated earnings amount for the excess non-concessional contributions calculated by the Commissioner is included in the individual's assessable income. This is done to reduce any tax benefit obtained by an individual exceeding the cap. The individual will be entitled to a non-refundable tax-offset equal to 15 per cent of the associated earnings amount included in their assessable income. ***[Schedule 1, item 7, subsections 292-20, 292-25 and 292-30 of the ITAA 1997]***

1.66 This direction is separate and in addition to the Commissioner's existing discretion under section 292-465 to disregard an individual's non-concessional contributions or reallocate them to a different financial year in special circumstances, consistent with the object of excess non-concessional tax.

Example 1.4: Non-concessional contributions where value of superannuation interests are nil

In the 2014-15 financial year Regina makes non-concessional contributions that result in her exceeding her non-concessional contributions cap by $100,000. The Commissioner determines that the associated earnings amount is $19,000. The Commissioner gives her a notice of excess non-concessional contributions determination stating her excess contributions amount of $100,000, an associated earnings amount of $19,000 and a total release amount of $116,150 ($100,000 plus 85 per cent of the associated earnings amount of $19,000).

Before receiving the determination Regina was paid a superannuation lump sum benefit of her entire balance of her only superannuation interest.

Regina makes a valid election to not release any amount from superannuation as the value of her superannuation interests is nil.

The Commissioner is satisfied that the total value of all Regina's superannuation interests is nil, and notifies Regina that he has made a direction that the value of all of her superannuation interests is nil.

As a result of this Regina does not have an excess non-concessional contributions tax liability for the 2014-15 financial year.

The amount of associated earnings calculated by the Commissioner of $19,000 is included in Regina's assessable income for the 2014-15 income year and taxed at her marginal tax rate. She is entitled to a non-refundable tax-offset of $2,850, being equal to 15 per cent of the amount included in her assessable income.

Example 1.5: Non-concessional contributions where value of superannuation interests is nil after partial release

The Commissioner calculates that Paul's non-concessional contributions for the 2014-15 financial year exceed his non-concessional contributions cap by $100,000. The Commissioner calculates that the associated earnings amount is $19,000. At this time the Commissioner has no information that the value of Paul's superannuation interests is nil. The Commissioner gives Paul an excess non-concessional contributions determination stating his excess contributions amount of $100,000, an associated earnings amount of $19,000 and a total release amount of $116,150 ($100,000 plus 85 per cent of the associated earnings amount of $19,000).

At this time, Paul knows that the total value of all of his superannuation interests is less than the total release amount of $116,150. However he cannot make an election to not release the total release amount from superannuation because the value of his superannuation interests is nil. Paul elects to release the total release amount stated in the determination of $116,150 by notifying the Commissioner and specifying a superannuation provider that holds an interest for him.

The Commissioner issues a release authority to the specified superannuation provider which holds a superannuation interest for Paul. The total value of that superannuation interest is $60,000. Paul has no other superannuation interest with this or any other superannuation provider.

In compliance with the release authority the superannuation provider pays the $60,000 to Paul, the maximum amount that can be released by the provider. The provider notifies the Commissioner and Paul of the amount released. The provider also notifies the Commissioner of the amount unable to be released and the reason the amount was unable to be released.

The Commissioner notifies Paul that the full amount of the release authority has not been successfully released and asks Paul to either:

- nominate another superannuation provider for release of the unpaid amount of $56,150, being the amount of the release authority issued less the amount that was released; or
- elect not to release the unpaid amount because the value of all of his superannuation interests is now nil.

Paul notifies the Commissioner of his election not to release the unpaid amount because the value of his remaining superannuation interests is now nil. The Commissioner is satisfied that the value of Paul's remaining superannuation interests is nil and makes a direction that the value of all of Paul's superannuation interests is nil. The Commissioner notifies Paul of the direction. As a result, Paul has no excess non-concessional contributions for the financial year.

The effect of the direction made by the Commissioner that the value of Paul's superannuation interests is nil does not affect the non-concessional contributions of $60,000 that were already released in accordance with the release authority. The effect of both the amount released and the Commissioner's direction is that Paul does not have excess non-concessional contributions for the financial year. The associated earnings amount included in Paul's assessable income is the total associated earnings amount of $19,000 stated in the determination made by the Commissioner. Paul also receives a non-refundable tax offset of $2,850, being 15 per cent of the associated earnings amount included in his assessable income.

Review rights

1.67 An individual who is dissatisfied with: an excess non-concessional contributions determination made in relation to them; an income tax assessment to include an offset or to include associated earnings in assessable income (or both); a decision not to make a direction that section 292-467 applies; a decision to exercise the discretion to disregard an individual's non-concessional contributions (or a decision not to exercise the discretion) can object to the relevant decision in the manner set out in Part IVC of the TAA 1953. ***[Schedule 1, item 44, section 97-35 of Schedule 1 to the TAA 1953, item 15, subsection 292-467(4) of the ITAA 1997]***

1.68 If an individual who makes one of the objections above on a particular ground and also makes, or could make, another one or more of the above objections on the same ground, the taxation decisions to which the objections are made are treated, for the purposes of Part IVC of the TAA 1953, as a single taxation decision. ***[Schedule 1, item 18, section 14ZVC of the TAA 1953]***

1.69 This simplifies objection processes by allowing the individual to make a single objection to a number of taxation decisions they are dissatisfied with, where the grounds of objection are the same.

1.70 Individuals remain able to object to excess non-concessional contributions assessments and determinations to disregard or reallocate non-concessional contributions (or decisions not to make a determination).

Consequential amendments

1.71 A number of consequential amendments are made a result of the items in the Bill referred to above. ***[Schedule 1, items 1 to 6, 9 to 14, 17, 19, 21 to 25, 27, 28, 30, 31, 34, 35, 37, 42 to 45 and 48]***

1.72 A paragraph reference is also corrected so that a person who fails to give a superannuation provider a release authority for the payment of excess non-concessional contributions tax is liable to an administrative penalty. ***[Schedule 1, item 47, section 288-90 of Schedule 1 to the TAA 1953]***

Application and transitional provisions

1.73 The amendments made by the Bill apply in relation to non-concessional contributions for the 2013-14 and later financial years. ***[Schedule 1, item 49]***

1.74 This measure was announced in the acting Assistant Treasurer's Media Release titled 'Superannuation excess contributions tax' of 13 May 2014. While these changes apply retrospectively, the Bill ensures that no taxpayer need face a disproportionate penalty for exceeding their excess non-concessional contributions after the date of announcement.

1.75 As taxpayers have the choice of whether to make an election and withdraw their excess contributions and associated earnings or continue to be subject to the existing excess non-concessional tax arrangements, taxpayers will not be adversely affected.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 — Fairer taxation of excess non-concessional contributions

1.76 This Schedule 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

1.77 Currently, excess non-concessional contributions tax is imposed at the top marginal tax rate on non-concessional contributions in excess of an individual's cap. This results in individuals incurring a disproportionate penalty, especially as these contributions are made out of after-tax income and are generally made inadvertently.

1.78 Non-concessional contributions are, broadly, contributions made to a complying superannuation plan that are not included in the assessable income of the complying superannuation provider.

1.79 Excess non-concessional contributions tax will not be imposed on excess contributions to the extent that they are released from superannuation, or where the value of an individual's remaining superannuation interests is nil. Associated earnings on released amounts are included in the individual's assessable income and taxed at the individual's marginal tax rate. Individuals will also be entitled to a non-refundable tax offset equal to 15 per cent of the earnings that are included in the individual's assessable income.

1.80 As a result, individuals who exceed their non-concessional cap and withdraw the excess contributions and associated earnings or no longer have money left in superannuation will no longer face a disproportionate penalty.

1.81 Excess non-concessional contributions tax will be imposed on excess non-concessional contributions that remain in a superannuation plan.

Human rights implications

1.82 The Schedule does not engage any of the applicable rights or freedoms.

Conclusion

1.83 This Schedule is compatible with human rights as it does not raise any human rights issues.

Chapter 2
Transferring the tax investigation function to the Inspector-General of Taxation

Outline of chapter

2.1 Schedule 2 to this Bill amends the *Inspector-General of Taxation Act 2003* (IGT Act) by transferring the tax investigative and complaint handling function of the Commonwealth Ombudsman (Ombudsman) to the Inspector-General of Taxation (Inspector-General) and merging that function with the Inspector-General's existing function of conducting systemic reviews. This provides taxpayers with a specialised complaint handling process for taxation matters and aligns the systemic review role of the Inspector-General with the correlative powers and functions of the Ombudsman.

2.2 Unless otherwise noted, all legislative references in this chapter are to the IGT Act.

Context of amendments

The current regulatory regime of the Inspector-General of Taxation

2.3 The IGT Act commenced on 16 April 2003. It allows the Governor-General to appoint an independent Inspector-General to conduct systemic reviews into the administration of tax laws and to provide recommendations to Government.

2.4 The Inspector-General may review systems which are established by the Commissioner of Taxation (Commissioner) in relation to the administration of the tax laws and systems established by tax laws that deal with administrative matters (known as 'systemic reviews'). The Inspector-General reports findings and recommendations of a review to the Government. The IGT Act does not provide for the investigation of individual taxpayer matters or handling of complaints.

2.5 The *Ombudsman Act 1976* (Ombudsman Act) establishes the Ombudsman. The essential function of the Ombudsman is to investigate complaints made by persons aggrieved by administrative actions of Commonwealth agency officials. The Ombudsman has powers to

question officials, provide protection to those providing information, and to inspect documents and premises. The Ombudsman may make recommendations to the Department or agency concerned, and provide a report to the responsible Minister.

2.6 The Ombudsman has jurisdiction to investigate any ‘matter of administration’ of a Department or a prescribed authority, including the administration of a taxation law by the Commissioner. The Ombudsman may do this of his or her own motion or in response to an individual complaint.

2.7 Issues surrounding taxation laws can be complex and specialised. This complexity is compounded as the administration of the taxation laws is scrutinised by both the Inspector-General and the Ombudsman. By concentrating expertise about taxation administration issues, taxpayers are provided with a dedicated body to investigate and handle complaints about all taxation matters.

2.8 The Inspector-General is well-suited to have the sole jurisdiction to investigate individual complaints about the administration of taxation law matters in addition to the current systemic function. Accordingly, the Inspector-General will be given all of the powers and functions necessary to comprehensively investigate and handle complaints relating to the administration of taxation laws (of both a systemic and individual nature).

Summary of new law

2.9 Schedule 2 broadens the Inspector-General’s function so that he or she may investigate all individual complaints of maladministration of taxation law matters. This is achieved by transferring the investigative and complaint handling powers and functions that relate to taxation law matters from the Ombudsman to the Inspector-General.

2.10 Schedule 2 to this Bill also makes consequential amendments to the *Income Tax Assessment Act 1936* (ITAA 1936), the *Taxation Administration Act 1953* (TAA 1953) and the *Tax Agent Services Act 2009* (TASA 2009).

Comparison of key features of new law and current law

New law	*Current law*
The Inspector-General may investigate systems established by the Australian Taxation Office (ATO) to administer taxation laws and systems established by taxation laws to the extent that they deal with administrative matters.	The Inspector-General may review systems established by the ATO to administer taxation laws and systems established by taxation laws that deal with administrative matters.
The Inspector-General has a number of new investigative powers. The Inspector-General may investigate individual complaints and the administration of taxation law matters. This is achieved through transferring the investigative and complaint handling powers and functions of the Ombudsman to the Inspector-General so far as they relate to taxation law matters.	There are no equivalent powers in the IGT Act.
The Inspector-General may request the Tax File Number from a person making a complaint to facilitate or assist in the resolution of their matter with the ATO.	There are no equivalent powers in the IGT Act.

Detailed explanation of new law

The current regulatory regime of the Inspector-General of Taxation

2.11 The Inspector-General's jurisdiction is set out in section 7. The Inspector-General may review systems which are established by the Commissioner in relation to the administration of the tax laws and systems established by tax laws that deal with administrative matters. Tax laws are defined as an Act, or part of an Act, which is administered by the Commissioner. The Inspector-General's jurisdiction does not include separate bodies which also form part of the taxation system, such as the Tax Practitioners Board and the regime it administers under the TASA 2009.

2.12 Subsection 8(2) allows the Minister to direct the Inspector-General, in writing, to conduct a review. For example, the Minister has previously directed the Inspector-General to undertake the review into the ATO's Change Program and the review into delayed or

changed ATO views on significant issues. The Inspector-General must incorporate the review in his or her work program, which the Inspector-General may set under section 9. The Inspector-General has complete administrative flexibility in setting his or her work program. However, the Inspector-General must consult with the Ombudsman and the Commonwealth Auditor-General at least once each year in setting his or her work program.

2.13 After completing a review, the Inspector-General must make a written report to the Minister under section 10 setting out the subject and outcome of the review and any recommendations that the Inspector-General thinks appropriate concerning how the system reviewed could be improved. The Minister must then cause a copy of each report to be tabled in each House of Parliament within 25 sitting days, under section 11. This happens as a matter of course, irrespective of whether any action is taken by the Commissioner.

2.14 A person who gives evidence to the Inspector-General in response to a request or requirement is immune from criminal and civil liability under section 17.

The current regulatory regime of the Commonwealth Ombudsman

2.15 The Ombudsman may examine any ‘matter of administration’ by a Department or a prescribed authority. The Ombudsman may do this of his or her own motion or in response to a complaint.

2.16 A ‘matter of administration’ is not defined to ensure that the Ombudsman is not inadvertently prevented from investigating a matter. There are several express limits on this jurisdiction, which are outlined in subsection 5(2) of the Ombudsman Act, including action taken by a Minister, a Judge, or a Department or prescribed authority to promote, terminate or change the remuneration of individual employees. Other than these limitations, there is no other constraint on the definition.

2.17 In areas where another body has a comparable but more specialised function to the Ombudsman, the Ombudsman Act provides specific mechanisms for the Ombudsman to transfer relevant matters to that specialist body.

2.18 Under subsection 15(2) of the Ombudsman Act, the Ombudsman must make a copy of the report available to either the prescribed authority or Department investigated and the Minister concerned. The Ombudsman may request from the Department that it gives the Ombudsman, within a specified timeframe, a list of any actions

the Department is intending to take in response to any of the matters or recommendations in the Ombudsman's report.

2.19 Under section 16 of the Ombudsman Act, where the Ombudsman is of the opinion that reasonable action has not been taken by the Department or prescribed authority, the Ombudsman may inform the Prime Minister in writing. Where the Ombudsman has done this, he or she may also furnish a copy of the report to the Speaker of the House of Representatives, and the President of the Senate. This report must include any comments which the prescribed authority or Department has furnished under subsection 15(5) of the Ombudsman Act concerning the report.

2.20 A person who is compelled to give evidence by the Ombudsman is immune from criminal and civil liability. Furthermore, an individual who provides information to the Ombudsman voluntarily or in relation to a request from the Ombudsman is also immune from criminal and civil liability.

Changing the regulatory regime of the Inspector-General of Taxation

2.21 These amendments wholly transfer all of the investigative and complaint handling powers and functions so far as they relate to matters of administration under a taxation law by a tax official from the Ombudsman to the Inspector-General. The amendments merge those powers and functions with the Inspector-General's existing powers and functions of conducting systemic reviews. Accordingly, some of the provisions in the IGT Act are repealed and substituted. ***[Schedule 2, item 11]***

2.22 The transfer of the Ombudsman function relating to matters of administration of taxation laws to the Inspector-General also includes a range of changes to related machinery provisions. The amendments redefine a number of terms in the IGT Act to make them consistent with the Ombudsman Act. For example, under section 38, the word 'review' is replaced with the expression 'an investigation'.

2.23 The amendments are designed to ensure the IGT Act follows the Ombudsman Act as closely as possible while still ensuring it is appropriate for the purposes of the Inspector-General's functions. However, complete consistency is not always possible. The Ombudsman Act is focused on investigating complaints, so some provisions need to be adapted to appropriately provide for the Inspector-General's systemic functions. Furthermore, the power for the Minister to make a direction to the Inspector-General is retained. ***[Schedule 2, items 5, 7 and 17]***

The functions of the Inspector-General of Taxation

2.24 The Inspector-General will now have four key investigative functions relating to a matter of administration under a taxation law that reflect the existing functions of the Inspector-General and Ombudsman. ***[Schedule 2, item 11, section 7t]***

2.25 The Inspector-General retains his or her systemic powers to investigate systems established by the ATO and taxation laws dealing with administrative matters, and these powers are extended to include the Tax Practitioners Board. ***[Schedule 2, item 11, paragraphs 7(1)(c) and (d)]***

2.26 The Inspector-General may investigate action taken by a tax official affecting entities that relates to administrative matters under a taxation law when the entity makes a complaint. This has a broad application so that the Inspector-General may also investigate action relating to administrative matters under a taxation law. For example, the Inspector-General may investigate the subject of the taxpayer's complaint as well as related action taken by the ATO relating to taxpayer's complaint. Of note, subsection 3(3) of the Ombudsman Act provides that 'action' also includes 'inaction'. ***[Schedule 2, item 11, paragraph 7(1)(a)]***

Example 2.1

Olivia, a taxpayer, alleges in a complaint to the Inspector-General that the ATO has taken too long to process her income tax return and that the ATO failed to provide a satisfactory answer to her queries when she wrote to them about the matter.

The Inspector-General may decide to investigate Olivia's complaint that the ATO processed her income tax return late and that it failed to take appropriate actions.

Example 2.2

Martin is a taxpayer who makes a complaint to the Inspector-General that the ATO has incorrectly applied a class ruling to his circumstances.

The Inspector-General investigates and recommends that the ATO reverse its decision. Martin then applies to the ATO under the Compensation for Detriment caused by Defective Administration Scheme for compensation for losses suffered as a result of the incorrect administration.

Should Martin have a complaint about the ATO's response to his claim for compensation, then the Inspector-General may also investigate this matter as it is action that relates to a matter of administration under a

taxation law (that is, the ATO's application of the class ruling to his circumstances).

2.27 The Inspector-General also has the ability to investigate other actions taken by a tax official relating to administrative matters under a taxation law by his or her own motion, such as when the action is not subject to a specific complaint. This ensures that the Inspector-General has the flexibility to investigate a wide range of administrative actions. ***[Schedule 2, item 11, paragraph 7(1)(b)]***

2.28 The Inspector-General may also investigate action that is not in respect of tax administration action when it is transferred to him or her by the Ombudsman upon deciding that that aspect of the complaint could be more appropriately or effectively dealt with by the Inspector-General. Similarly, if the Inspector-General receives a complaint with parts related to tax administration action and parts related to other action within the Ombudsman's jurisdiction, he or she may investigate the parts of a complaint not related to tax administration action if the Ombudsman advises that the Inspector-General does not need to transfer the matter. Such complaints are taken to be made under the IGT Act. ***[Schedule 2, item 11, paragraph 7(1)(e) and section 10 of the IGT Act and item 35, paragraph 6D(4)(b) and subsection 6D(6) of the Ombudsman Act]***

2.29 However, the Inspector-General must not investigate taxation laws imposing or creating an obligation to pay an amount or dealing with the quantification of a tax liability. This is consistent with existing subsection 7(2) of the IGT Act. ***[Schedule 2, item 11, subsection 7(2)]***

Example 2.3

Melissa, a taxpayer, lodges a complaint with the Inspector-General, alleging that the ATO has processed her income tax return incorrectly and that she does not owe as much as is stated in her Notice of Assessment.

The Inspector-General may investigate how the ATO has processed Melissa's income tax return but not the quantification of her tax liability.

2.30 The Inspector-General may report on the abovementioned investigations. Investigations into a complaint or actions affecting a particular taxpayer or tax practitioner are maintained confidentially and reported accordingly. Reports recommending changes to the taxation laws must be provided to the Minister and publicly released. ***[Schedule 2, item 11, subsection 7(1), sections 15 and 18]***

Objects clause and definitions

2.31 Reflecting the expanded role of the Inspector-General, the objects clause of the IGT Act is amended to provide for the Inspector-General's new role of investigating and handling complaints of all taxpayers, tax practitioners and other entities so far as they relate to the administration of taxation laws. ***[Schedule 2, item 1]***

2.32 The type of applicant that may raise issues is defined broadly to ensure that all individuals or other persons who may be affected or otherwise have an interest in improving the administration of taxation laws have access to the Inspector-General's processes. The Inspector-General's systemic powers outlined in existing paragraph 3(c) of the IGT Act are altered so that they are expressed consistently with the correlative powers in the Ombudsman Act. ***[Schedule 2, items 1 and 3]***

2.33 A number of terms in the IGT Act are also redefined to reflect the enhanced role of the Inspector-General. For example, the phrase '***tax laws***' is substituted with '***taxation laws***' to reflect the broadening of the Inspector-General's exclusive jurisdiction in relation to matters of taxation. The phrase '***tax administration action***' refers to actions relating to administrative matters under a taxation law that has been taken by a tax official that is either the subject of a complaint or by the Inspector-General's own motion. An '***investigation into a complaint***' or '***investigation into a systemic issue***' refers to an investigation outlines in the IGT Act. The '***Commissioner of Taxation***' means the Commissioner. '***Entity***' is defined to have the same meaning as under the *Income Tax Assessment Act 1997* (ITAA 1997). Relatedly, in Part 4 of the IGT Act, which relates to information management, 'an entity' also replaces the phrase 'a taxpayer' in existing subsection 37(1) of the IGT Act, which relates to protected information and documents. ***[Schedule 2, items 2, 4, 6, 7, 9, 12, 13, 14 and 18]***

2.34 A '***taxation law***' is an existing concept which refers to those Acts (or part of Acts) administered by the Commissioner, as defined in section 995-1 of the ITAA 1997. This wider definition includes all laws (including parts of laws) administered by the Commissioner but also brings the Tax Practitioners Board and the regime it administers under the TASA 2009 into the ambit of the IGT Act. ***[Schedule 2, items 1, 2, 6, 7 and 9]***

2.35 '***Tax official***' is similar to the current definition but also includes the Chair of the Tax Practitioners Board and members of the Tax Practitioners Board (as provided in section 90-1 of the TASA 2009) as well as related personnel (as provided in section 60-80 of the TASA 2009). It also includes '***ATO official***' which defines the Commissioner and related personnel. ***[Schedule 2, items 4, 8 and 10]***

Conducting investigations

2.36 The Inspector-General may conduct an investigation into administrative matters under taxation laws of his or her own initiative. ***[Schedule 2, item 11, subsection 8(1)]***

Example 2.4

> The Inspector-General becomes aware of that Sheridan, an ATO official, is improperly processing taxpayers' tax returns.
>
> None of the affected taxpayers (or a tax practitioner on their behalf) has lodged a complaint. However, the Inspector-General may decide to investigate Sheridan's actions.

2.37 If so directed by the Minister, the Inspector-General is required to conduct an investigation. This is consistent with existing subsection 8(2) of the IGT Act. In keeping with the existing IGT Act, the Minister can only direct the Inspector-General to investigate systemic issues, namely systems established by the ATO, the Tax Practitioners Board or taxation laws to the extent they deal with administrative matters. The Minister cannot direct the Inspector-General to investigate matters affecting entities. The Inspector-General may decide when to complete an investigation although it would be prudent for the Inspector-General and the Minister to discuss the most efficient way to handle the timing of the investigation. In complying with a direction from the Minister, the Inspector-General should have regard to his or her obligations under the *Public Governance, Performance and Accountability Act 2013*. ***[Schedule 2, item 11, subsection 8(2)]***

2.38 Similarly, to reflect existing subsection 8(3) of the IGT Act, the Inspector-General may be asked to conduct an investigation into systemic issues by the Minister, Commissioner of Taxation, or by a resolution of either House of Parliament or a Committee of Parliament. Consistent with broader amendments, the Tax Practitioners Board may also request an investigation. However, as this is a request, the Inspector-General has the discretion of deciding whether or not to investigate the matter. ***[Schedule 2, item 11, subsection 8(3)]***

Discretion not to investigate certain complaints

2.39 The Inspector-General's discretion whether to investigate certain complaints is based on subsections 6(1) and (3) of the Ombudsman Act. In addition, under the new provisions the Inspector-General also has the discretion not to investigate a complaint if the complainant has not yet raised the complaint with the Commissioner or the Tax Practitioners Board as the case may be. This additional provision reflects the taxation

specific context in which the Inspector-General operates, as compared with the more general role of the Ombudsman. ***[Schedule 2, item 11, section 9]***

Example 2.5

> Julian, a taxpayer, alleges in a complaint to the Inspector-General that the ATO has taken too long to process his income tax return.
>
> The Inspector-General, upon starting to investigate the complaint, discovers that Julian has not yet raised the complaint with the ATO. The Inspector-General may decide not to continue investigating the matter.

Transferring complaints to the Commonwealth Ombudsman

2.40 Generally, the Inspector-General must transfer a matter to the Ombudsman if he or she receives a complaint that falls entirely within the jurisdiction of the Ombudsman. However, the Inspector-General may instead transfer such a matter to a more appropriate body in accordance with the existing transfer mechanisms in the Ombudsman Act such as transferring a matter to the Australian Public Service Commissioner under subsections 6(9) and 6(10) of the Ombudsman Act. ***[Schedule 2, item 11, paragraph 10(1)(a) and subsection 10(5)]***

2.41 Unless the Ombudsman otherwise advises, the Inspector-General must also transfer part of a complaint that is not about tax administration action to the Ombudsman. In determining this, the Inspector-General will need to consult the Ombudsman in relation to the complaint. In some cases, the Ombudsman may consider it more efficient for the Inspector-General to investigate the matter. ***[Schedule 2, item 11, paragraph 10(1)(b)]***

2.42 The Inspector-General may consult the Ombudsman on either the complaint itself or the *kinds* of complaints that may be more appropriately or effectively dealt with by the Ombudsman. This provides administrative efficiencies by not limiting the Inspector-General and the Ombudsman to consulting on a case-by-case basis only. However, the Inspector-General and the Ombudsman must consult in good faith.

2.43 In addition, the Inspector-General may transfer a complaint that partially relates to a matter of tax administration action to the Ombudsman if he or she is satisfied that the whole complaint could be more appropriately or effectively dealt with by the Ombudsman. Again, the Inspector-General must consult the Ombudsman in relation to the complaint or complaints of that kind. The Inspector-General must use his or her best judgement to determine if the complaint would be more appropriately dealt with by the Ombudsman. ***[Schedule 2, item 11, subsection 10(2)]***

2.44 These arrangements provide the Inspector-General with administrative flexibility to determine how to best manage the complaints he or she receives.

2.45 If the Inspector-General transfers the complaint to the Ombudsman, any information in the Inspector-General's control or possession relevant to the complaint must also be transferred to the Ombudsman. The Inspector-General is also required to notify the complainant in writing that the complaint has been transferred to the Ombudsman. The effect of a transfer means that the complaint is taken to be made to the Ombudsman under the Ombudsman Act. ***[Schedule 2, item 11, subsections 10(3) and (4)]***

2.46 Of note, the IGT Act and Ombudsman Act both provide for the protection of confidential information, including maintaining legal professional privilege.

Investigative and related powers

2.47 The Inspector-General will, in effect, have equivalent investigative powers to the Ombudsman. Incorporating the relevant investigative powers in the Ombudsman Act by reference and modification in the IGT Act ensures legislative consistency so that any changes to the Ombudsman's powers apply automatically to the Inspector-General. ***[Schedule 2, item 11, section 15]***

2.48 Parts IIA, IIB and IIC of the Ombudsman Act provide a precedent for this design approach.

2.49 The specific provisions in the Ombudsman Act that will apply in the IGT Act are:

- subsection 3(1), to the extent that it provides for the definitions of ***Agency Head, authorized person, Commonwealth service provider, disclosable conduct*** and ***law enforcement agency***, subsections 3(2), (6) and (7) — interpretation;
- section 3BA — Commonwealth service providers;
- section 3C — application of the Act;
- section 3D — application of the Criminal Code;
- subsections 5(2), (3) and (3A) — relating to functions of the Ombudsman;

- section 5A — public interest disclosure functions of the Ombudsman;
- subsections 6(5), (9), (10), (11) and (16) to (19) — relating to a discretion not to investigate certain complaints;
- section 6C — transfer of complaints to the Information Commissioner;
- section 7 — complaints;
- section7A — preliminary inquiries;
- section 8 except for paragraphs (7A)(b) and 10(ba) to (10)(d) and subsections (8), (9), (10B), (10C) and (12) — relating to investigations;
- section 9 — power to obtain information and documents;
- section 10 — unreasonable delay in exercising power;
- section 10A — Ombudsman may refer questions to the Administrative Appeals Tribunal;
- section 11 — Ombudsman may recommend that the principal officer refer questions to the Administrative Appeals Tribunal (AAT);
- section 11A — powers of the Federal Court of Australia;
- section 12 — complainant and Department to be informed;
- section 13 — power to examine witnesses;
- section 14 — power to enter premises;
- section 15 — reports by Ombudsman;
- section 16 except for subsections 16(4) and (5) — reports where appropriate action not taken on Ombudsman's report;
- section 17 — special reports to Parliament;
- section 18 — Ombudsman may have further discussion with principal officer;
- section 19 — reports to Parliament;

- section 35AA — disclosure of information and documents to Integrity Commissioner;
- section 35A — disclosure of information by Ombudsman;
- section 35B — disclosure of Australian Crime Commission (ACC) information;
- section 35C — disclosure of Australian Commission for Law Enforcement Integrity (ACLEI) information;
- section 36 — offences; and
- section 37 — protection from civil actions.

[Schedule 2, item 11, paragraphs 15(a) to (j)]

2.50 The specific modifications to these provisions in their application to the IGT Act are:

- a reference to 'the Ombudsman' applies as a reference to 'the Inspector-General';
- a reference to 'an investigation under the Ombudsman Act' applies as a reference to 'an investigation under this Act [the IGT Act]';
- a reference to 'a complaint under the *Ombudsman Act 1976*' applies as a reference to 'a complaint under this Act [the IGT Act]';
- a reference to 'a Department', 'a prescribed authority' or a 'Department or a prescribed authority' applies as a reference to either 'the Commissioner', 'the Australian Taxation Office' or 'the Tax Practitioners Board' as the context requires;
- a reference to 'another person who is not a Department or prescribed authority' applies as a reference to either 'another person who is not a Department of State', 'an authority of the Commonwealth, 'or the Commonwealth' as the context requires;
- a reference to either a 'principal officer of a Department or prescribed authority' or the 'Secretary of a Department' applies as a reference to either the 'Commissioner' or the

‘Chair of the Tax Practitioners Board’ as the context requires;

- a reference to an officer of a Department or prescribed authority other than a principal officer applies as a reference to ‘tax official’;
- a reference to ‘an officer within the meaning of section 35 of the *Ombudsman Act 1976*’ applies as a reference to either the Inspector-General’ or ‘a member of the Inspector-General’s staff’ as the context requires;
- a reference to ‘paragraph 5(1)(b) of the *Ombudsman Act 1976*’ applies as a reference to ‘paragraph 7(1)(b) of this Act [the IGT Act]’;
- a reference to an ‘enactment’ applies as either a reference to an ‘Act’ or an ‘instrument made under an Act’ as the context requires;
- a reference to ‘in the *Ombudsman Act 1976*’ applies as a reference to either ‘in the *Ombudsman Act 1976*’ or ‘in this Act [the IGT Act]’;
- a reference to ‘the Minister administering the *Ombudsman Act 1976*’, ‘the responsible Minister’ or ‘the Prime Minister’ applies as a reference to ‘the Minister administering this Act [the IGT Act]’;
- a reference to either ‘a report under Division 2 of Part II of the *Ombudsman Act 1976*’ or to ‘a report under that Act [the Ombudsman Act]’ also applies as a reference to a ‘report under ‘that Act’ or under ‘this Act [the IGT Act]’ as the context requires and
- with the exception of subsection 35(5), a reference to ‘section 35 [of the Ombudsman Act]’ applies as a reference to ‘section 37 of this Act [the IGT Act]’.

[Schedule 2, item 11, table items 1 to 14 in section 15 and section 16]

2.51 The effect of this reference and modification approach, for example, is that references to the ‘Ombudsman’ in the Ombudsman Act apply as references to the ‘Inspector-General’ when read into the IGT Act. Similarly, references to a report in the Ombudsman Act may apply as a reference to a report under either the Ombudsman Act or under the IGT Act. ***[Schedule 2, item 11, table items 1 and 13 in section 15]***

2.52 Whilst most of the references outlined in the table items apply to provisions in the Ombudsman Act without further modification or interpretation, situations may arise where the references need to be interpreted and applied in a more flexible manner as the references are described in substance rather than form. For example, under table item 2, a reference to 'an investigation under the *Ombudsman Act 1976*' would also apply to the phrase 'an investigation under this Act' contained in section 8 of the Ombudsman Act. ***[Schedule 2, item 11, table item 2 in section 15]***

2.53 Similarly, references to a 'Department' or 'prescribed authority' in the Ombudsman Act apply in the IGT Act as a reference to either 'the Commissioner', 'the Australian Taxation Office' or 'the Tax Practitioners Board'. ***[Schedule 2, item 11, table item 4 in section 15 and section 16]***

2.54 By applying section 15, section 3C of the Ombudsman Act provides that the IGT Act applies in and outside of Australia, extending to every external Territory and section 3D of the Ombudsman Act applies Chapter 2 of the Criminal Code to all offences against the IGT Act. ***[Schedule 2, item 11, paragraph 15(c)]***

2.55 Similarly, subsections 5(2), (3) and (3A) of the Ombudsman Act outline certain actions that the Inspector-General cannot investigate, such as action taken by a Minister or Judge. ***[Schedule 2, item 11, paragraph 15(d)]***

2.56 In addition:

- Section 10 of the Ombudsman Act, which specifies that when a complaint is made that an entity has delayed unreasonably in deciding whether to do an act or thing under their power, the Ombudsman may issue a certificate concluding that there has been an unreasonable delay. This is altered in the IGT Act by items 1 to 3.

- Section 10A of the Ombudsman Act, which provides that the Ombudsman may refer questions to the AAT, is altered by items 1 to 3.

- Section 11 of the Ombudsman Act, which specifies that Ombudsman may recommend that the principal officer refer questions to the AAT, is altered by items 1, 4 and 5.

- Section 11A of the Ombudsman Act, which specifies that Ombudsman may make an application to the Federal Court of Australia for a determination of a question relating to the exercise of power, is altered by items 1, 4 and 5.

- Section 12 of the Ombudsman Act specifies the action the Ombudsman must take in informing complainants and Departments about investigations and is modified by items 1, 2 and 4.

- The power to examine witnesses under section 13 of the Ombudsman Act is altered by item 1.

- Entering premises under section 14 of the Ombudsman Act, is modified by items 1, 2 and 4. This retains the Inspector-General's analogous powers in existing section 21 of the IGT Act, which allows access to ATO premises for the purpose of exercising its investigation powers.

[Schedule 2, item 11, table items 1 to 5 of section 15]

2.57 Sections 35AA to 35C of the Ombudsman Act provides for when the Ombudsman may make disclosures, including to the Integrity Commissioner, the public and disclosures of ACC information and ACLEI information. Section 36 outlines offences under the Ombudsman Act, such as failure or refusal to attend before the Ombudsman or furnishing information. The penalty related to a refusal or failure to appear before or furnish information for an investigation into a systemic issue applies as if it were imprisonment for 6 months. ***[Schedule 2, item 11, subsection 17(4) and paragraph 15(j)]***

2.58 Significantly, section 37 of the Ombudsman Act provides an individual who gives information in 'good faith' to the Ombudsman is immune from civil liability. Under the existing IGT Act, only someone who is compelled to give evidence by the Inspector-General is immune from criminal and civil liability. ***[Schedule 2, item 11, paragraph 15(j)]***

2.59 Not all provisions in the Ombudsman Act will be relevant to the Inspector-General. For example, subsection 6(6) of the Ombudsman Act, which provides that the Ombudsman may decide not to investigate action of a prescribed authority that is a national broadcasting service or where a complaint could have been made to the Australian Communications and Media Authority.

2.60 Generally section 8 of the Ombudsman Act (as modified by table items 1, 2, 4, 5, and 6), will determine how the Inspector-General conducts investigations — although, as noted above, not all provisions in section 8 of the Ombudsman Act will apply in the IGT Act. Notwithstanding subsection 8(2) of the Ombudsman Act which requires investigations to be conducted in private, the Inspector-General may conduct an investigation, or part of an investigation, into a systemic issue in private or public as he or she thinks appropriate. For example, in

conducting the systemic investigation the Inspector-General may take private submissions from taxpayers, tax practitioners and other interested entities. He or she may also choose to arrange working groups, public meetings or forums to further canvass opinion and better understand concerns about systemic investigations. This is consistent with the Inspector-General's current practice. ***[Schedule 2, item 11, section 15 and subsection 17(1)]***

2.61 Section 9 of the Ombudsman Act, which specifies the power to obtain information and documents, is modified by table items 1, 2, and 5 in its application to the IGT Act. However, to provide greater administrative flexibility, a person need not only furnish information to the Inspector-General in writing but could instead provide information orally. ***[Schedule 2, item 11, section 15 and subsections 16(3) and 17(2)]***

2.62 Section 15 of the Ombudsman Act provides for when the Ombudsman must make a report, the content of the report and the requirement to furnish a copy of the report to the relevant Minister after the Ombudsman has completed an investigation. Section 16 of the Ombudsman Act specifies recourse the Ombudsman may take if appropriate action is not taken following the completion of the Ombudsman's report and sections 17 to 19 of the Ombudsman Act provides when the Ombudsman may provide reports to Parliament. These provisions apply in relation to reports under the IGT Act.

2.63 Accordingly, the Inspector-General may make the same type of reports as the Ombudsman. However, the Inspector-General may also make reports recommending changes to taxation laws. These reports must be provided to the Minister. ***[Schedule 2, item 11, section 15, subsection 17(3) and section 18]***

2.64 As a result of the addition of these new provisions from the Ombudsman Act, a number of cross-references in various provisions in the IGT Act have been modified so that they correspond to the Ombudsman Act in a newly created part in the IGT Act. For example, under section 39 of the IGT Act, the phrase 'section 14 or 15 is replaced with either 'section 9 of the *Ombudsman Act 1976'* or 'that section'. Under subparagraphs 39(1)(e)(v) and (vi) and 39(2)(c)(v) and (vi), a person referred to in a report under section 10, section 41 or section 38 is referred to as the subject of a report under 'this Act [IGT Act] or the *Ombudsman Act 1976*. Under subsection 40(2), the protection of the Minister, the Inspector-General or a person acting under the Inspector-General's authority from civil liability from actions arising from performing their functions under both 'this Act [IGT Act]' or the Ombudsman Act. ***[Schedule 2, items 16 and 19 to 25]***

Reports recommending improvements to taxation laws

2.65 The Inspector-General may make a written report to the Minister after completing an investigation under the IGT Act detailing recommendations to improve the relevant taxation law and the reasons for the recommendations. The Inspector-General may choose to include other material in the report. The Minister must then ensure the report is made publically available by the 25th sitting day of the House of Representatives after the day that the Minister receives the report. This differs slightly to the current arrangements that require a report's release within 25 sitting days of both the House of Representatives and the Senate. The new requirement is easier to calculate and will result in the report having the same release date or, in some cases, a slightly earlier release date.

Example 2.6

> The Inspector-General provides a report to the Minister recommending changes to the taxation laws. However, the Inspector-General has also, in a separate report to the Commissioner, identified number of administrative-related recommendations.
>
> The report to the Minister may include the recommendations directed to the Commissioner.

2.66 These arrangements do not require the Minister to personally make the report publically available. For example, the Minister could request the Inspector General issue a press and release the report on his or her website. ***[Schedule 2, item 11, section 18]***

Annual report

2.67 These amendments expand the Inspector-General's annual report requirements, such as by listing the number of investigations into action affecting particular taxpayers or the number of investigations into systemic issues. This is consistent with existing subsections 19ZS(6) and (7) of the Ombudsman Act. ***[Schedule 2, items 26 to 28]***

Delegation of certain powers

2.68 The Inspector-General may continue to delegate certain powers to a member of his or her staff, as occurs under existing section 42 of the IGT Act. The Inspector-General may also delegate his or her power to make arrangements and engage consultants. Given the Inspector-General is a relatively small agency, such a delegation power is necessary to ensure administrative efficiencies. This power to delegate excludes the provisions relating to making a report, the content of the report and action to be taken when issuing a report. ***[Schedule 2, item 29, section 42]***

Supporting Regulations

2.69 These amendments provide for the Governor-General to make regulations for fees and allowances to be paid to reimburse for expenses of a person who attends before the Inspector-General or a member of his or her staff. ***[Schedule 2, item 30, subsection 43(2)]***

Other amendments

2.70 These provisions repeal redundant consequential amendments to the *Freedom of Information Act 1982* and the *National Crime Authority Act 1984* captured in Schedule 1 of the IGT Act. ***[Schedule 2, items 31 and 32]***

Tax File Numbers and sharing information

2.71 The Inspector-General may request a person making a complaint to quote their Tax File Number to facilitate or assist in the resolution of their matter with the Commissioner. The Inspector-General may then provide the Tax File Number to the Commissioner to investigate a complaint and the Commissioner may disclose the relevant tax file number to the Inspector-General. This arrangement provides for the disclosure of Tax File Numbers for the purposes of administering the IGT Act, for example, to verify a person's identity and provide an ongoing identifier for the Inspector-General during an investigation. A Tax File Number has the same meaning as in the ITAA 1997. ***[Schedule 2, items 6 and 15, sections 4, 37B and 37C]***

2.72 This will allow the Inspector-General to provide a more efficient and tailored service by matching the information provided in a complaint with the information held by the ATO.

2.73 Consequential amendments are made to the ITAA 1936 and the TAA 1953 to enable the Inspector-General and the Commissioner to undertake these actions and to allow tax officials to provide taxpayer protected information to the Inspector-General for the purposes of investigating or reporting on a matter under the IGT Act. ***[Schedule 2, items 36 and 39 to 43]***

2.74 Consequential amendments are also made to the TASA 2009 so that members and associated staff of the Tax Practitioners Board may also provide information to the Inspector-General for these purposes. ***[Schedule 2, items 37 and 38]***

Amendments to the Ombudsman Act

2.75 These amendments provide for two main changes. The first ensures action taken by the Inspector-General or action that may be

investigated by the Inspector-General is not also investigated by the Ombudsman. ***[Schedule 2, items 33 to 35]***

2.76 The second provides a mechanism for complaints made to the Ombudsman to be transferred to the Inspector-General. This mechanism applies in the same way as the transfer mechanism of the Inspector-General to the Ombudsman as set out in paragraphs 2.40 to 2.46. In addition, the provisions provide that the Ombudsman may investigate complaints that may involve administrative action under the under the *Public Interest Disclosure Act 2013* and the *Freedom of Information Act 1982* that also relates to administrative matters under a taxation law. ***[Schedule 2, item 35]***

2.77 To provide for situations where the Ombudsman is conferred with jurisdiction to investigate action under another Act that may also relate to administrative matters under a taxation law these amendments allow for the regulations to prescribe such Acts. ***[Schedule 2, item 35, paragraph 6D(2)(c) of the Ombudsman Act]***

Application and transitional provisions

2.78 These amendments commence on the later of the 14th day after this Bill receives Royal Assent or 1 May 2015. These amendments apply to complaints and investigations or reviews conducted by an entity on or after the commencement of the Schedule. ***[Schedule 2, item 44]***

2.79 The regulations in the Ombudsman Act that provide for the payment of fees and allowances to persons for attending or appearing as witnesses also apply as if they were regulations under the IGT Act. The Governor General may still make regulations that provide for the payment of fees and allowances to persons for attending or appearing before the Inspector-General or a member of the Inspector-General's staff. ***[Schedule 2, item 45]***

2.80 After commencement, the Inspector-General may decide not to continue to investigate or to continue an investigation that has been initiated if the Inspector-General believes the complainant has already complained about the action to the Ombudsman. ***[Schedule 2, item 46]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 — Transferring of the tax investigation function from the Commonwealth Ombudsman to the Inspector-General of Taxation

2.81 This Schedule 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

2.82 This Schedule amends the *Inspector-General of Taxation Act 2003* by transferring the investigative and complaint handling function of the Commonwealth Ombudsman relating to taxation law matters to the Inspector-General of Taxation and merging that function with the Inspector-General's existing function of conducting systemic reviews.

Human rights implications

2.83 These amendments provides taxpayers with a specialised complaint handling process for taxation matters and aligns the systemic review role of the Inspector-General of Taxation with the correlative powers and functions of the Ombudsman. By establishing a single entity to investigate both individual complaints about taxation relating to administrative matters and systemic taxation administrative matters, taxpayers can ensure a consistent level of service, in furtherance to the rights to equality and non-discrimination under Article 26 of the *International Covenant on Civil and Political Rights* as well as the right to an effective remedy, engaging Article 2(3) of the *International Covenant on Civil and Political Rights*.

2.84 The amendments engage Article 17 of the *International Covenant on Civil and Political Rights*, as it will interfere with the privacy

of individuals. Specifically, Article 17 says that individuals shall not be subject to unlawful or arbitrary interference with their privacy.

2.85 In order to investigate complaints about taxation relating to administrative matters and systemic taxation administrative matters, the Inspector-General may request and be provided with a relevant entity's Tax File Number from the Commissioner. However, if information sharing were not allowed, it would greatly hamper the ability of the Inspector-General to conduct a meaningful investigation. The disclosure mechanism is proportional to achieving this objective, as information is shared for the purposes of the Inspector-General investigating and reporting or otherwise administering the IGT Act.

Conclusion

2.86 These amendments' engage the right to equality and non-discrimination as well as the right to an effective remedy in the progression of human rights. The amendments also engage the right to privacy.

2.87 However, in light of the above, this Schedule is compatible with human rights because, to the extent, it may limit human rights, these limitations are reasonable, necessary and proportionate.

Chapter 3
CGT exemption for compensation and insurance

Outline of chapter

3.1 Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) to ensure that:

- a capital gains tax (CGT) exemption is available to certain trustees and beneficiaries who receive compensation or damages;
- a CGT exemption is available to trustees of complying superannuation entities for insurance policies relating to illness or injury; and
- the CGT primary code rule applies to capital gains and capital losses that are disregarded by complying superannuation entities arising from injury and illness insurance policies, life insurance policies and annuity instruments.

3.2 All references in this Chapter are to the ITAA 1997 unless otherwise stated.

Context of amendments

3.3 This measure was one of the 92 announced but unenacted tax and superannuation measures that the Assistant Treasurer announced on 14 December 2013 would proceed.

3.4 It was intended that trustees or beneficiaries who receive compensation or damages in respect of certain events (such as an injury an individual suffers at work) or in respect of certain policies of insurance (such as illness, injury or death) not be subject to CGT. However, the express wording of the relevant provisions in the ITAA 1997 has created uncertainty about this treatment. This measure confirms the existing administrative treatment in respect of compensation and insurance policy receipts.

3.5 It was also intended that insurance policies held by complying superannuation funds for injuries and illnesses suffered by an individual not be subject to CGT. This measure ensures that the CGT exemption applies to amounts received under these types of policies.

Summary of new law

3.6 A CGT exemption is available in respect of compensation or damages received by:

- a trustee (other than a trustee of a complying superannuation entity) for a wrong or injury a beneficiary suffers in their occupation, or a wrong, injury or illness a beneficiary or their relative suffers personally; and
  - – a beneficiary that subsequently receives a distribution that is attributable to such compensation or damages from the trustee;
- a taxpayer (other than a trustee of a complying superannuation entity) for a policy of insurance on the life of an individual or an annuity instrument if the taxpayer is the original owner of the policy or instrument; and
- a trustee of a complying superannuation entity for a policy of insurance for an individual's illness or injury.

3.7 The CGT primary code rule applies to capital gains and capital losses that are disregarded by complying superannuation entities arising from injury and illness insurance policies, life insurance policies and annuity instruments.

Comparison of key features of new law and current law

New law	*Current law*
CGT exemption for certain compensation or damages received by trustees	
Disregard a capital gain or capital loss you make from a CGT event relating to compensation or damages you receive as the trustee of a trust (other than a trust that is a complying superannuation entity) for: • any wrong or injury a beneficiary	No equivalent.

of the trust suffers in their occupation; or • any wrong, injury or illness a beneficiary of the trust or the beneficiary's relative suffers personally.	
CGT exemption for certain amounts received by beneficiaries	
Disregard a capital gain or capital loss you make as the beneficiary of a trust, from money, property or other CGT assets you receive that relates to the compensation or damages the trustee of the trust receives (see above), for: • any wrong or injury you suffer in your occupation; or • any wrong, injury or illness you or your relative suffers personally.	No equivalent.
CGT exemption for original owners of insurance policies for life and annuity instruments	
Disregard a capital gain or capital loss you make in relation to a policy of insurance on the life of an individual or an annuity instrument if you are the original owner of the policy or instrument (but not a trustee of a complying superannuation entity, see below).	Disregard a capital gain or capital loss you make in relation to a policy of insurance on the life of an individual or an annuity instrument if you are the original *beneficial* owner of the policy or instrument.
CGT exemption for complying superannuation entities: illness or injury insurance policies	
Disregard a capital gain or capital loss you make in relation to a policy of insurance for an individual's illness or injury if you are the trustee of a complying superannuation entity for the income year in which the CGT event happened resulting in the capital gain or capital loss.	No equivalent.

CGT primary code rule for complying superannuation entities: life, illness and injury insurance policies	
The CGT primary code rule applies to capital gains and capital losses that are disregarded by complying superannuation entities arising from life, injury and illness insurance policies and annuity instruments. This ensures that they are not subject to treatment on revenue account.	The CGT primary code rule does not apply to capital gains and capital losses that are disregarded by complying superannuation entities arising from policies of life insurance and annuity instruments. Such disregarded capital gains or capital losses are subject to treatment on revenue account.

Detailed explanation of new law

Compensation or damages payments received by trustees (other than trustees of complying superannuation entities)

3.8 A capital gain or capital loss made by a trustee in relation to compensation or damages for any wrong or injury a beneficiary of the trust suffers in their occupation, or any wrong, injury or illness a beneficiary of the trust or their relative suffers personally, is disregarded. ***[Schedule 3, item 3, paragraph 118-37(1)(b)]***

Example 3.1: Compensation received by trustee

Robert is the beneficiary of ABC trust, which was established after Robert fell off a roof whilst working for Roofing Inc and suffered serious injuries. Patrick, as trustee of ABC trust, seeks compensation on behalf of Robert from Roofing Inc's insurance company, and receives compensation for the accident.

The capital gain made by Patrick in relation to the compensation received is disregarded.

Compensation or damages payments received by beneficiaries

3.9 A capital gain or capital loss made by a beneficiary is also disregarded if the trustee of a trust then distributes money, property or other CGT assets to the beneficiary that are attributable to compensation or damages received by the trustee to which paragraph 3.8 applies. ***[Schedule 3, item 3, paragraph 118-37(1)(ba)]***

Example 3.2: Trustee distribution of compensation to beneficiary

Following on from example 3.1 above, Robert recovers from his injuries, but requires substantial further medical and other support.

Patrick, as trustee of ABC trust, distributes the compensation to Robert to assist in paying his hospital bills.

Any capital gain made by Robert in relation to the compensation received is disregarded.

Insurance policies and annuity instruments

Trustees and other taxpayers (other than the trustee of a complying superannuation entity)

3.10 A capital gain or capital loss made from a CGT event happening to an interest in a policy of insurance on the life of an individual or an annuity instrument is disregarded by the original *owner* of the policy or instrument (except if they are the trustee of a complying superannuation entity, see item 5 of the table in subsection 118-300(1) in relation to trustees of a complying superannuation entity for these types of interests). ***[Schedule 3, item 4, table item 3 in subsection 118-300(1)]***

3.11 The amendment removes the reference to 'original *beneficial* owner' to ensure that taxpayers, such as trustees can claim the CGT exemption for compensation or damages received, where they hold the legal interest in the relevant insurance policy for a beneficiary.

Subsequent payment to a beneficiary

3.12 Where a trustee then makes a payment to a beneficiary in respect of the policy or instrument, any capital gain or capital loss made by the beneficiary is also disregarded. This exemption also applies where the payment is made to a legal personal representative, as defined in the ITAA 1997. For example, the exemption applies where the payment is made to the executor of an estate of an individual who has died. This ensures that the CGT exemption is not clawed back when proceeds are subsequently distributed to a beneficiary or their legal personal representative. ***[Schedule 3, item 6, subsection 118-300(1A)]***

Example 3.3: Life insurance proceeds distributed to beneficiary

Gillian holds a life insurance policy from Insurance Co. Gillian passes away and Gillian's husband Tim, as executor of her estate, receives $100,000 from Insurance Co in respect of the policy. Tim, as executor of Gillian's estate pays $50,000 to Megan, a beneficiary of Gillian's estate. The payment to Megan is attributable to the amount received by Gillian's estate in respect of the life insurance policy.

Any capital gain made by Megan, as a beneficiary of Gillian's estate, is disregarded.

Trustees of complying superannuation entities

3.13 A capital gain or capital loss is disregarded if:

- it is made when a CGT event happens to an interest in a policy of insurance for an individual's illness or injury; and
- the capital gain or loss is made by the trustee of a complying superannuation entity for the income year in which the CGT event happened. ***[Schedule 3, item 5, table item 7 in subsection 118-300(1)]***

3.14 The table in subsection 118-300(1) has been amended to ensure that the CGT exemption applies to policies of insurance that are not contingent on the duration of human life (item 5 of the table in subsection 118-300(1) applies to life insurance policies and annuity instruments) but are for an individual's illness or injury (for example, total and permanent disability).

Example 3.4: Insurance proceeds received for injury

Lake Super Fund holds total and permanent disability insurance for its members, through Insurance Co.

Tony, a member of Lake Super Fund, is injured at work and applies to be paid a total and permanent incapacity benefit from Lake Super Fund. Insurance Co is satisfied it must pay the insured amount to Lake Super Fund in respect of Tony's injury.

Any capital gain made by Lake Super Fund on the payment from Insurance Co is disregarded.

CGT primary code rule

3.15 Section 295-85 operates to ensure that gains and losses of complying superannuation entities are generally taxed under the CGT provisions rather than on revenue account (the CGT 'primary code rule'). The exceptions to this rule (see subsections 295-85(3) and (4)) enable certain capital gains and capital losses that are otherwise disregarded for the purposes of CGT, to be accounted for on revenue account.

3.16 Currently, one of the exceptions to the CGT primary code rule for complying superannuation entities is capital gains and capital losses in relation to insurance policies that are disregarded under section 118-300. Section 118-300 applies to insurance policies such as life insurance policies and annuity instruments.

3.17 Schedule 3 amends the table in subsection 118-300(1) to also include a policy of insurance for an individual's illness or injury as an additional policy type to which the CGT exemption applies (see paragraphs 3.13 and 3.14 above). ***[Schedule 3, item 5, table item 7 in subsection 118-300(1)]***

3.18 An amendment is made to table item 10 of subsection 295-85(4) to modify one of the exceptions to the CGT primary code rule for complying superannuation entities. This ensures that capital gains and capital losses that are disregarded by complying superannuation entities under section 118-300 (for example, in respect of injury or illness insurance policies, life insurance policies and annuity instruments) are not subject to taxation treatment on revenue account.

Example 3.5: Application of CGT primary code rule to insurance proceeds for injury

Assuming the same facts as Example 3.4, the capital gain made by Lake Super Fund on the payment from Insurance Co under a total and permanent disability insurance policy for one of its members is disregarded.

The disregarded capital gain is subject to the CGT primary code rule. This ensures that the disregarded capital gain is not subject to treatment on revenue account.

3.19 However, disregarded capital gains and capital losses from general insurance policies for property (table item 2 in subsection 118-300(1)) continue to be subject to taxation treatment on revenue account. Such gains or losses should continue to be subject to revenue account treatment because of the potential for gains (or losses) of a revenue nature to arise, for example from landlord insurance policies held by complying superannuation entities. ***[Schedule 3, item 7, table item 10 in subsection 295-85(4)]***

Adjustment for non-assessable component

3.20 CGT event E4 happens when the trustee of a trust makes a payment in respect of a taxpayer's interest in the trust and some or all of this payment is non-assessable income for taxation purposes (the 'non-assessable component').

3.21 When this occurs, the cost base and reduced cost base of the interest must be reduced by the amount of the non-assessable component. When the cost base reaches zero, any additional non-assessable component results in a capital gain.

3.22 A beneficiary that receives an amount from a trustee that is attributable to an amount for which the trustee received an exemption (under sections 118-37 and 118-300), may have a zero cost base for their interest in the trust because they have not purchased that interest. Therefore, a capital gain equal to the payment received will arise if CGT event E4 happens when they receive the non-assessable payment. This would effectively claw back the CGT exemption provided at the trustee level (see paragraphs 3.8 and 3.10 to 3.11 above).

3.23 To avoid this result, payments to which paragraph 118-37(1)(ba) and subsection 118-300(1A) (compensation or damages paid through a trust to a beneficiary) are excluded from the calculation in working out the non-assessable component. ***[Schedule 3, items 1 and 2, paragraphs 104-71(1)(da) and (db)]***

Consequential amendments

3.24 As a result of the amendments to paragraphs 118-37(1)(a) and (b), Schedule 3 restructures paragraph 118-37(1)(a), without changing the operation of the provision. Paragraph 118-37(1)(a) provides that capital gains or capital losses arising from CGT events are disregarded if they relate directly to compensation or damages a person receives for:

- any wrong or injury the person suffers in their occupation; or
- any wrong, injury or illness they or their relative suffers personally.

[Schedule 3, item 3, paragraph 118-37(1)(a)]

Application and transitional provisions

Application

3.25 The amendments made by this Schedule apply in relation to CGT events happening in the 2005-06 and later income years. ***[Schedule 3, item 8]***

3.26 The 2011-12 and 2012-13 Budgets announced that these amendments would apply from the 2005-06 income year and later income years. The amendments are consistent with the administrative practice of the Commissioner of Taxation (Commissioner) and ensure that taxpayers that could have benefited by relying on the Commissioner's administrative practice are not disadvantaged by this change.

Amendment of assessments

3.27 Section 170 of the *Income Tax Assessment Act 1936* (ITAA 1936) limits the circumstances in which the amendment of an assessment may be made. Depending on the type of taxpayer, amendments may be made within either two or four years after the day on which the Commissioner gives notice of the assessment.

3.28 However, due to the retrospective application of the amendments made by Schedule 3, it is important that taxpayers are not denied the opportunity to give effect to the changes because of the operation of section 170. Accordingly, section 170 does not prevent the amendment of an assessment if:

- the assessment was made before Royal Assent of the Bill;
- the amendment is made for the purpose of giving effect to Schedule 3; and
- the amendment is made within two years after the day the Bill receives Royal Assent.

[Schedule 3, clause 4]

3.29 As the amendments apply to CGT events that occurred in the 2005-06 income year and later income years, the amendment period available to taxpayers will have expired in some cases. Accordingly the above provision ensures that taxpayers are given sufficient time to seek an amendment to previous assessments, if required, following the commencement of Schedule 3.

3.30 Section 170 also does not prevent the Commissioner amending an assessment if a taxpayer applies within the required period (two years after the day the Bill receives Royal Assent) (see section 170A of the ITAA 1936) but the Commissioner amends the assessment after this period. This ensures that the rights of a taxpayer to give effect to the amendments are not denied if the Commissioner does not make an amendment within the two year period provided a taxpayer's application for amendment is made within the required period.

3.31 The amendment period applicable for the purpose of giving effect to Schedule 3 does not apply to assessments made on or after Royal Assent of the Bill because in these cases taxpayers will be aware of the amendments and are able to take them into account in lodging returns.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 — CGT exemption for compensation and insurance

3.32 This Schedule 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

3.33 Schedule 3 to this Bill amends the *Income Tax Assessment Act 1997* to ensure that a capital gains tax (CGT) exemption is available to certain trustees and beneficiaries who receive compensation or damages.

3.34 It was intended that trustees or beneficiaries who receive compensation or damages in respect of certain events (such as an injury an individual suffers at work) or in respect of certain policies of insurance (such as illness, injury or death) not be subject to CGT. However, the express wording of the relevant provisions in the ITAA 1997 has created uncertainty about this treatment. This measure confirms the existing administrative treatment in respect of compensation and insurance policy receipts.

3.35 Schedule 3 also amends the CGT exemption to ensure that it is available to trustees of complying superannuation entities for insurance policies relating to illness or injury.

3.36 It was intended that insurance policies held by complying superannuation funds for injuries and illnesses suffered by an individual not be subject to CGT. This measure ensures that the CGT exemption applies to amounts received under these types of policies.

3.37 Schedule 3 also ensures that the CGT primary code rule applies to capital gains and capital losses that are disregarded by complying superannuation entities arising from injury and illness insurance policies, life insurance policies and annuity instruments. This ensures that such gains and losses are not subject to revenue account treatment.

3.38 This measure makes technical amendments to the taxation law and was one of the 92 announced but unenacted tax and superannuation

measures that the Assistant Treasurer announced on 14 December 2013 would proceed.

Human rights implications

3.39 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

3.40 This Schedule is compatible with human rights as it does not raise any human rights issues.

Chapter 4
Greater certainty in relation to fund mergers

Outline of chapter

4.1 Schedule 4 to the Bill amends the *Income Tax Assessment Act 1997* (ITAA 1997) and *Income Tax (Transitional Provisions) Act 1997* (ITTPA) to ensure that individuals whose superannuation benefits are involuntarily transferred from one superannuation plan to another plan without their request or consent are not disadvantaged through that transfer. Schedule 4 to the Bill also amends the *Taxation Administration Act 1953* (TAA 1953) to remove the need for a roll-over benefit statement to be provided to an individual whose superannuation benefits are involuntarily transferred.

Context of amendments

4.2 An individual's superannuation benefits may be transferred from one superannuation plan to another plan in circumstances that may be outside the control of the individual, including as a result of a merger under a successor fund arrangement.

4.3 The proportioning rule is designed to remove an individual's capacity to reduce their potential tax liability by manipulating the tax components of their superannuation benefits. The rule determines the tax free and taxable components of a superannuation benefit, and is applied when a benefit is paid from a superannuation plan, including by way of a roll-over.

4.4 The proportioning rule applies to transfers between superannuation plans (a superannuation fund, approved deposit fund or retirement savings account) that are made without a specific request from or consent of an individual ('involuntary transfer'), as these transfers are payments of superannuation benefits and are also roll-over superannuation benefits if the transfers are between complying superannuation plans. An involuntary transfer of a superannuation benefit may occur under a successor fund arrangement; or where there is a compulsory transfer of an accrued default amount to a MySuper product in another complying superannuation plan; or where a transfer is made to an eligible rollover fund.

4.5 In some circumstances an individual may be potentially disadvantaged through the application of the proportioning rule when their benefits are involuntarily transferred into a new plan.

4.6 Where an individual's benefit is paid from a superannuation interest not supporting an income stream, the tax free component of the interest is limited to the value of the interest at the time the transfer is made. In circumstances where the value of the interest was less than the sum of the contributions and crystallised segments of the interest in the original plan (because the plan had incurred investment losses after the individual had made personal contributions to the plan) an individual could not recoup this difference in tax free component in the new plan. By contrast, if the individual had remained in the original plan, they could recoup this difference through an increase in the value of their interest from future plan earnings. The amount of tax free component of the interest could then be greater when a benefit is later paid from the plan.

4.7 These amendments will remove a possible impediment to a fund merger or rationalisation arrangement proceeding by ensuring that, where an individual's benefits in a superannuation plan are involuntarily transferred to a new superannuation plan, the individual will remain in the same taxation position, as if the transfer had not occurred.

4.8 The amendments will also remove the unnecessary burden for the original plan provider to give roll-over benefit statements to former members, depositors or account holders affected by the transfer. These individuals will still receive information on the transfer in accordance with disclosure obligations under the *Corporations Regulations 2001*.

Summary of new law

4.9 Schedule 4 amends the ITAA 1997 to ensure that where an individual's benefits are involuntarily transferred to a new superannuation plan the individual will remain in the same taxation position, as if the transfer had not occurred. For superannuation interests in the original plan that were not supporting an income stream, the new superannuation plan will recognise the value of the individual's contribution segment and crystallised segment in the original plan (or proportion thereof), immediately prior to the benefit payment. In the case of a superannuation interest in the original plan that was supporting an income stream that began to be paid on or after 1 July 2007, the income stream commenced in the new plan will retain the same tax components as the income stream in the original plan. For an income stream in the original plan that began to be paid before 1 July 2007, amendments to the ITTPA will ensure that the

income stream commenced in the new plan will be treated in the same way as the income stream in the original plan was under that Act.

4.10 Amendments to the TAA 1953 will also remove the need for the original superannuation plan to give a roll-over benefit statement to each former member, depositor or account holder affected by the transfer.

Comparison of key features of new law and current law

New law	*Current law*
The amount of the contributions segment and the crystallised segment of an individual's superannuation interest will no longer be limited to the value of their interest at any particular time.	The amount of the contributions segment and the crystallised segment of an individual's superannuation interest is limited to the overall value of their superannuation interest at any particular time.
If an involuntary roll-over superannuation benefit is paid from a superannuation interest in the original plan that was not supporting an income stream to a new superannuation plan, the contributions segment in the new plan will include an amount equal to the sum of the contributions and crystallised segments of the interest in the original plan (or a proportion thereof for the transfer of an accrued default amount that is only part of the value of the interest in the original plan) immediately before the involuntary roll-over superannuation benefit payment.	If an involuntary roll-over superannuation benefit is paid from a superannuation interest in the original plan that was not supporting an income stream to a new superannuation plan, the contributions segment in the new plan equals the tax free component of the involuntary roll-over superannuation benefit.
If an involuntary roll-over superannuation benefit is paid from a superannuation interest in the original plan that was supporting an income stream that began to be paid on or after 1 July 2007, the proportions of the tax free and taxable components of the income stream commenced in the new plan will be the same as the income stream in the original plan. Where the income stream in the	If an involuntary roll-over superannuation benefit is paid from a superannuation interest in the original plan that was supporting an income stream, the income stream ceases immediately prior to the transfer. The law does not provide clear guidance on how the tax free and taxable components of the benefit payment to the new plan are determined, or how the income

New law	*Current law*
original plan began to be paid before 1 July 2007, the income stream commenced in the new plan will be treated in the same way as the income stream in the original plan was under the ITTPA.	stream commenced in the new plan is treated where the income stream in the original plan began to be paid before 1 July 2007.
Transferring superannuation plans will not be required to give roll-over benefit statements to former members, depositors, or account holders for involuntary roll-over superannuation benefits.	Transferring superannuation plans are required to give roll-over benefit statements to former members, depositors or account holders for all roll-over superannuation benefits.

Detailed explanation of new law

4.11 All superannuation benefit payments, including roll-over superannuation benefit payments, may be made up of two components, a tax free component and a taxable component.

4.12 The proportioning rule (section 307-125 of the ITAA 1997) specifies how to calculate the tax free and taxable components for most superannuation benefits.

4.13 For benefits paid from a superannuation interest not supporting an income stream, the value of the interest and its components must be worked out at the time the benefit is paid. For benefits paid from an interest supporting an income stream, the value of the interest and its components must generally be determined at the time the income stream commenced.

4.14 Under section 307-210 of the ITAA 1997, the tax free component of a superannuation interest is so much of the value of the interest as consists of the contributions segment and the crystallised segment of the interest. The contributions segment of the interest will include the tax free component of any roll-over superannuation benefit that has been paid into the interest from another superannuation plan (see subsection 307-220(2) of the ITAA 1997).

4.15 The taxable component of a superannuation interest is the value of the interest less the tax free component of the interest (see section 307-215 of the ITAA 1997).

4.16 The application of the proportioning rule to certain involuntary roll-overs could disadvantage some individuals.

4.17 In the case of an involuntary transfer of benefits from an individual's interest in the original plan that was not supporting an income stream immediately before the transfer, where the sum of the contributions segment and the crystallised segment of the interest exceeds the value of the interest at the time of the transfer, the individual's tax free component of their interest in the new plan would be limited to the value of their interest in the original plan at the time of the transfer.

4.18 This could occur where the original plan experienced investment losses after the individual had made personal contributions that were not included in the plan's assessable income. The amount by which the sum of the segments exceeds the value of the interest in the original plan would not be recouped by earnings in the new plan. By contrast, if there had been no involuntary transfer, the individual could recoup this excess through new earnings to the original plan. The amount of tax free component of the interest could then be greater when a benefit is later paid from the plan.

Example 4.1: Loss of a tax free component through an involuntary roll-over under the current law

Since 1 July 2007, Harry has made $500,000 in personal contributions, from his after tax earnings, to Village Super. Harry has not commenced an income stream with Village Super. Harry's superannuation interest in Village Super therefore has a possible maximum contributions segment of $500,000.

The trustees of Village Super agree with the trustees of Civic Super to merge Village Super into Civic Super on 1 July 2015. Before the merger the two trustees also agree that Civic Super will provide members with equivalent rights to those in Village Super. At the merger date, Harry's interest in Village Super is valued at only $450,000.

The roll-over of Harry's benefits from Village Super to Civic Super, on 1 July 2015, would result in Harry losing $50,000 of the value of his contributions segment in Village Super. While the tax free component of the roll-over superannuation benefit paid to Civic Super would be the full amount of that benefit, this benefit is only $450,000, not the full $500,000 that could potentially be tax free. As a result, his contributions segment in Civic Super, following the merger is only $450,000.

If Harry's benefits had remained in Village Super his possible maximum contributions segment could have remained at $500,000 and might have been recouped by future earnings in Village Super.

4.19 In the case of an involuntary transfer of benefits from a superannuation interest in the original plan that was supporting an income stream immediately before the transfer, the income stream in the original plan ceases before the transfer is paid. The current law does not provide clear guidance on how the tax free and taxable components of the benefit paid to the receiving plan as part of an involuntary transfer are determined as the benefit does not arise from a commutation of an income stream.

4.20 This contrasts with the situation under paragraph 307-125(3)(c) of the ITAA 1997 where an income stream is commuted in the original plan (through a roll-over request from the income stream holder) and the commuted balance is used to commence a new income stream in a new plan. In that situation the tax free and taxable component proportions of the income stream paid from the new plan would be the same as the proportions for the income stream in the original plan.

4.21 Schedule 4 introduces a new definition to identify a particular form of a roll-over superannuation benefit, being an involuntary roll-over superannuation benefit. An involuntary roll-over superannuation benefit is:

- a payment transferring a superannuation interest of a member of a superannuation fund, a depositor with an approved deposit fund or a holder of a retirement savings account (RSA) to a successor fund (other than a self managed superannuation fund) without the consent of the member, depositor or holder;

- a payment transferring an accrued default amount of a member of a complying superannuation fund to a MySuper product in another complying superannuation fund as a result of an election under paragraph 29SAA(1)(b) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) or under section 388 of the SIS Act, where the transfer happens between 1 July 2015 and 1 July 2017; or

- a payment of consideration for the issue of a superannuation interest in an eligible rollover fund under section 243 of the SIS Act.

In effect, all three circumstances involve a transfer of an individual's benefits between superannuation plans without the consent of the individual concerned.

[Schedule 4, items 1 and 5]

4.22 The Schedule also replaces the current definition of 'successor fund' in subsection 995-1(1) of the ITAA 97 with a new definition that includes a transfer from an approved deposit fund to another superannuation fund, approved deposit fund or RSA (being the successor fund). ***[Schedule 4, item 17]***

4.23 The amendments remove the limitation that the crystallised and contributions segments of a superannuation interest cannot individually or cumulatively exceed the value of the interest. The tax free component of a superannuation interest (see section 307-210 of the ITAA 97) remains limited to so much of the value of the interest as consists of the contributions segment and crystallised segment. ***[Schedule 4, items 14 and 15]***

4.24 The note to section 307-210 of the ITAA 1997 has been replaced with new subsection 307-210(2) confirming how the tax free component of a superannuation interest is reduced when a superannuation benefit is paid from the interest. This is done by firstly reducing the crystallised segment of the interest (but not below zero) by an amount equal to the tax free component of the superannuation benefit. If any amount of the tax free component of the superannuation benefit remains after the reduction of the crystallised segment (if the interest has one), then the contributions segment is reduced by this remaining amount. This has the effect of reducing the tax free component of the interest by the amount of the tax free component of the benefit. In practice this does not require superannuation plans to track these reductions for an interest supporting a superannuation income stream because the tax free and taxable components of benefits paid from such an interest reflect the proportions of those components of the interest at the time the income stream commenced. ***[Schedule 4, items 11 to 14 and 16]***

4.25 The method for determining the contributions segment of a superannuation interest in section 307-220 of the ITAA 1997 is modified to disregard the tax free component of an involuntary roll-over superannuation benefit paid into the interest from an earlier interest (other than one that was supporting an income stream immediately before that benefit was paid). ***[Schedule 4, item 3]***

4.26 If that involuntary roll-over superannuation benefit is covered by new paragraph 306-12(a) or (c) (that is, the roll-over is to a successor fund or an eligible rollover fund), an amount equal to the sum of the contributions segment and crystallised segment of the earlier interest immediately before that benefit was paid is included in the contributions segment of the new interest. This is because the entire value of the earlier interest must be transferred to the new fund in these circumstances. ***[Schedule 4, item 4]***

4.27 If the involuntary roll-over superannuation benefit is covered by paragraph 306-12(b) (that is, the roll-over is a transfer of an accrued default amount), the amount of that benefit may be only part of the value of the earlier interest. In this circumstance the amount included in the contributions segment of the new interest is the same proportion of the sum of the contributions segment and crystallised segment of the earlier interest immediately before the involuntary roll-over superannuation benefit was paid, as that benefit was to the value of the earlier interest immediately before that benefit was paid. For example, if the amount of the benefit (the accrued default amount transferred) was half the value of the earlier interest at the relevant time, then half the sum of the contributions segment and crystallised segment of the earlier interest at the relevant time is included in the contributions segment of the new interest. ***[Schedule 4, item 4]***

4.28 The effect of these amendments, for an involuntary roll-over from an interest that was not supporting an income stream immediately before the involuntary roll-over, is that the contributions segment of the new interest in the new plan will not be limited by the value of the old interest in the original plan immediately before the involuntary roll-over occurred. In circumstances where investment losses in the original plan are effectively 'recovered' in the new plan, any tax free component otherwise lost through the involuntary roll-over could then be recouped on a later benefit payment from the new plan.

Example 4.2: Treatment of the contributions segment through an involuntary roll-over under the new law

Since 1 July 2007, Harry has made $500,000 in personal contributions, from his after tax earnings, to Village Super. Harry has not commenced an income stream with Village Super. As at 1 July 2015, Harry's superannuation interest in Village Super has a contributions segment of $500,000 and a crystallised segment of zero.

The trustees of Village Super agree with the trustees of Civic Super to merge Village Super into Civic Super on 1 July 2015. Before the merger the two trustees also agree that Civic Super will provide members with equivalent rights to those in Village Super. As at 1 July 2015, Harry's interest in Village Super is valued at only $450,000.

On 1 September 2015, Harry decides to retire and withdraw all his superannuation benefits from Civic Super. On 1 September 2015, the value of Harry's interest in Civic Super has risen to $490,000. No contributions have been made to Civic Super since the merger by Harry or on his behalf.

Under the new law Harry's contributions segment in Civic Super would be $500,000. That is, it would consist of the sum of the contributions segment and the crystallised segment of Harry's earlier interest in Village Super immediately before the merger with Civic Super. The tax free component of Harry's benefit payment on retirement would therefore be the full amount of the benefit payment, being $490,000.

By contrast, under the old law, Harry's contribution segment in Civic Super would have been limited to the value of the tax free component of the roll-over benefit paid from Village Super into Civic Super, being $450,000. Harry's retirement benefit payment would have therefore consisted of a $450,000 tax free component and a $40,000 taxable component.

4.29 Similarly, under the amendments, where an involuntary roll-over superannuation benefit is paid from a superannuation interest in the original plan that, immediately before the benefit was paid to the new plan, was supporting a superannuation income stream that began to be paid on or after 1 July 2007, the new income stream paid from the new plan will retain the same proportion of tax free and taxable components as the original income stream in the original plan. This will ensure there is no disadvantage to an individual in receipt of an income stream because of an involuntary roll-over. ***[Schedule 4, item 2]***

4.30 Where the superannuation income stream from the original plan began to be paid before 1 July 2007 and section 307-125 of the ITTPA applied to the income stream immediately before the involuntary roll-over superannuation benefit was paid, the amendments will ensure that section applies to the new superannuation income stream paid from the new plan where the new income stream is commenced using only the amount of the involuntary roll-over superannuation benefit. This is only relevant in respect of an involuntary roll-over superannuation benefit covered by new paragraph 306-12(a) of the ITAA 97 (successor fund transfers) as amounts supporting income streams are not accrued default amounts and eligible rollover funds do not pay income streams.

4.31 The amendments, in effect, treat the new income stream paid from the new plan as a continuation of the income stream paid from the original plan. This is achieved through section 307-125 of the ITTPA applying to the new income stream as if references in section 307-125 of the ITTPA to the new income stream or to the superannuation interest supporting that income stream (in relation to a time, or event happening, before the payment of the involuntary roll-over superannuation benefit) respectively include references to the income stream paid from the original fund or the superannuation interest that was supporting that income stream. Such references are described in substance, rather than

form. For instance, one of the events in subsection 307-125(3) of the ITTPA will be treated as having happened to the new income stream if one of those events had happened to the original income stream. (Although the involuntary transfer itself does not give rise to the happening of one of those events.) Similarly, benefits paid after 30 June 2007 from either the original or new income stream are taken into account when applying paragraph 307-125(6)(b) of the ITTPA to the new income stream. ***[Schedule 4, items 6 and 7]***

4.32 The amendments will also remove the need for the provider of a transferring plan to provide roll-over benefit statements to former members, depositors or account holders for involuntary roll-over superannuation benefits. These individuals will still receive information on the transfer in accordance with disclosure obligations under the *Corporations Regulations 2001*. They may also request information on the roll-over from their original plan under section 390-15 of Schedule 1 to the TAA. ***[Schedule 4, item 8]***

Application and transitional provisions

4.33 The amendments made by items 1 to 8 of Schedule 4 apply in relation to involuntary roll-over superannuation benefits paid on or after 1 July 2015. The amendments made by items 10 to 17 of Schedule 4 commence on 1 July 2015. ***[Schedule 4, item 9]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 — Providing certainty for superannuation fund mergers

4.34 This Schedule 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

4.35 An individual's superannuation benefits may be transferred from one superannuation plan to another plan in various contexts including as a result of the merger or rationalisation of a superannuation plan.

4.36 Currently, transfers of superannuation benefits between plans may trigger the proportioning rule, which is an integrity rule designed to remove individual member's capacity to manipulate the tax free and taxable components of their superannuation benefits.

4.37 As an integrity rule addressing the behaviour of individual members, the proportioning rule was intended to apply only to transactions within the control of those members. This measure will ensure that the proportioning rule does not impact on transactions that are beyond the control of individual members.

4.38 The changes in this Schedule will ensure that individuals whose superannuation benefits are involuntarily transferred from one superannuation plan to another plan without their request or consent are not disadvantaged through the transfer. The Schedule will also remove the need to provide a roll-over benefit statement, in addition to other disclosure information required under the *Corporation Regulations 2001*, to each individual in these circumstances.

Human rights implications

4.39 The Schedule does not engage any of the applicable rights or freedoms.

Conclusion

4.40 This Schedule is compatible with human rights as it does not raise any human rights issues.

Chapter 5
Disclosing tax information relating to proceeds of crime orders

Outline of chapter

5.1 Schedule 5 to this Bill amends the *Taxation Administration Act 1953* (TAA 1953) to allow taxation officers to record or disclose protected information to support or enforce a proceeds of crime order. It also clarifies that all orders relating to unexplained wealth made under a state or territory law are included in the definition of 'proceeds of crime order'.

Context of amendments

5.2 Taxation officers may record or disclose protected information for the purpose of the making, or proposed or possible making, of a proceeds of crime order under certain Commonwealth, state or territory laws (section 355-70 of Schedule 1 to the *Taxation Administration Act 1953*). A person's tax information may be of central importance to investigations, litigation and enforcement concerning the proceeds of crime.

5.3 These records or disclosures may be made for or to:

- authorised law enforcement agency officers;
- courts or tribunals; or
- prescribed Royal Commissions, commissions of inquiry and boards of inquiry of a state or territory.

5.4 In practice, these entities may also seek tax information to support or enforce a proceeds of crime order after it has been made.

5.5 ***Proceeds of crime order*** is defined in subsection 355-70(5) of Schedule 1 to the TAA 1953 and currently includes an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*) or a corresponding order under a state law or territory law. Differences between the Commonwealth's unexplained wealth orders and state and territory unexplained wealth schemes may raise some doubt as to whether

certain state and territory unexplained wealth orders 'correspond to' Commonwealth unexplained wealth orders.

Summary of new law

5.6 The amendments allow taxation officers to record or disclose protected information for the purpose of supporting or enforcing a proceeds of crime order.

5.7 The amendments also clarify that the definition of proceeds of crime order includes unexplained wealth orders made under a state or territory law.

Comparison of key features of new law and current law

New law	*Current law*
Taxation officers may make records for or disclosures to certain entities for the purpose of the making, or proposed or possible making, or supporting or enforcing, of a proceeds of crime order.	Taxation officers may make records for or disclosures to certain entities for the purpose of the making, or proposed or possible making, of a proceeds of crime order.
The definition of proceeds of crime order includes an order (including a declaration or direction), under a state law or territory law, relating to unexplained wealth.	The definition of proceeds of crime order includes an order, under a state law or territory law, corresponding to an unexplained wealth order (within the meaning of the (*Proceeds of Crime Act 2002*).

Detailed explanation of new law

5.8 It is an offence for a taxation officer to record or disclose protected information (section 355-25 of Schedule 1 to the TAA 1953). Section 355-70 of Schedule 1 to the TAA 1953 provides that the offence will not apply in certain circumstances, including where taxation officers make a record for or a disclosure to certain entities for the purpose of the making, or proposed or possible making, of a proceeds of crime order. This includes disclosure of protected information for the purposes of an investigation before any criminal proceeds action is commenced.

5.9 This Schedule extends the operation of this exception to circumstances where taxation officials made a record or disclosure for the

purpose of supporting or enforcing a proceeds of crime order. ***[Schedule 5, items 1 and 2, subsection 355-70(1) of Schedule 1 to the TAA 1953]***

5.10 ***Proceeds of crime order*** is defined in subsection 355-70(5) of Schedule 1 to the TAA 1953 and currently includes an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*) or a corresponding order under a state law or territory law.

5.11 Differences between the unexplained wealth framework under the *Proceeds of Crime Act 2002* and unexplained wealth schemes under state and territory laws may raise a level of uncertainty as to whether certain state and territory unexplained wealth orders 'correspond to' Commonwealth unexplained wealth orders.

5.12 This Schedule clarifies that all orders (including declarations or directions) relating to unexplained wealth that may be made under a state or territory law will be included in the definition of proceeds of crime order. This ensures that taxation information can be disclosed to law enforcement for the purposes of unexplained wealth investigations and prosecutions, notwithstanding that the legislative model in a State or Territory may be different to the Commonwealth scheme. This includes any preliminary orders relating to unexplained wealth such as an order to freeze or restrain property. ***[Schedule 5, item 3, subsection 355-70(5) of Schedule 1 to the TAA 1953]***

Application and transitional provisions

5.13 The amendments will apply from Royal Assent.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 — Disclosing tax information relating to proceeds of crime orders

5.14 This Schedule 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

5.15 Schedule 5 to this Bill amends the *Taxation Administration Act 1953* to allow taxation officers to record or disclose protected information for the purpose of supporting or enforcing a proceeds of crime order. It also clarifies the definition of proceeds of crime order to ensure that it extends to unexplained wealth orders made under a state or territory law.

Human rights implications

5.16 These amendments engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights*, which prohibits arbitrary or unlawful interference with privacy, because personal tax information may be recorded for or disclosed to entities other than the person the information relates to.

5.17 The amendments are consistent with the right to privacy because the records or disclosures will be authorised by law and not arbitrary. The amendments provide a reasonable, necessary and proportionate means of achieving the legitimate objective of confiscating financial benefits gained through criminal activities.

5.18 Where a proceeds of crime order has been made against an individual under a Commonwealth, state or territory law, these amendments will ensure that law enforcement bodies and other relevant entities have access to the information they need to support and enforce the order. The amendments also clarify that proceeds of crime orders relating to unexplained wealth state or territory laws are included.

Conclusion

5.19 This Schedule is consistent with the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights*.

Chapter 6
Exploration development incentive

Outline of chapter

6.1 Schedule 6 to this Bill and the Excess Exploration Credit Tax Bill 2014 introduce an exploration development incentive by amending the *Income Tax Assessment Act 1997* (ITAA 1997) and other tax legislation to provide a tax incentive to encourage investment in small mineral exploration companies undertaking greenfields minerals exploration in Australia. Australian resident investors of these companies will receive a tax incentive where the companies choose to give up a portion of their losses relating to their exploration expenditure in an income year.

6.2 The total value of the tax incentives available to taxpayers in respect of expenditure in an income year is restricted to $25 million for greenfields minerals expenditure incurred by eligible companies in 2014-15, $35 million for greenfields minerals expenditure incurred in 2015-16 and $40 million for greenfields minerals expenditure incurred in 2016-17.

6.3 The incentive is not available for expenditure incurred in income years after 2016-17.

Context of amendments

Mineral exploration in Australia

6.4 A significant part of the Australian economy is based on the extraction and sale of its mineral resources. Ongoing exploration and the discovery of new mineral resources is vital to the longer term future of the resources sector.

6.5 Exploration for minerals often involves significant expenditure and risks. While larger, established mining companies are generally in a position to fund such activities from their own profits, smaller companies focused solely on exploration are dependent on attracting investment to fund their activities. Such smaller companies are also more likely to engage in more speculative mineral exploration in greenfields areas rather than focusing on the development of their existing resources.

6.6 Over recent years there has been a noticeable decline in exploration, particularly greenfields exploration.

Policy background

6.7 The Government made a commitment in the 2013 election campaign to provide a tax incentive to Australian resident shareholders of small mineral exploration companies to support greenfields minerals exploration undertaken by these companies in Australia. The Government proposed that the incentive would be available for expenditure on greenfields minerals exploration incurred in 2014-15, 2015-16 and 2016-17. This proposal was confirmed in the 2014-15 Budget.

6.8 The Department of Industry will monitor greenfields exploration and the scheme throughout its operation, with a review of the scheme in 2016 and, subject to these review outcomes, the Government may decide to extend the programme for a further period.

Income tax and mineral exploration expenditure

6.9 Generally, mineral exploration expenditure is likely to be capital in nature and would not be deductible by taxpayers under the general deduction rules in the income tax law. However, specific provisions allow taxpayers to immediately deduct most expenditure incurred in the course of exploration or prospecting for minerals.

6.10 Section 40-80 of the ITAA 1997 generally allows an immediate deduction of the full value of any depreciating asset (broadly an asset with a limited useful life) when it is first used for exploration or prospecting for minerals and the taxpayer carries on mining operations, proposes to carry on such an operation, or incurred the expenditure in the course of a business of exploration or prospecting for minerals.

6.11 Section 40-730 of the ITAA 1997 allows an immediate deduction for other expenditure (both capital or revenue) incurred in exploration or prospecting for minerals where the taxpayer carries on mining operations, proposes to carry on such an operation, or incurred the expenditure in the course of a business of exploration and prospecting for minerals.

6.12 Most expenditure incurred in relation to exploration for mineral resources is likely to be deductible.

6.13 The benefit this provides differs significantly between different types of explorers.

6.14 Large mining companies undertaking minerals exploration obtain an immediate benefit from the deduction, as it can be immediately offset against the assessable income from their ongoing mining activities in the relevant income year.

6.15 On the other hand, smaller companies engaged solely in exploration for minerals may earn less assessable income in a given income year than they outlay on exploration or prospecting. Such companies therefore will generally have a tax loss for the income year. This tax loss will not provide any benefit unless a company earns sufficient assessable income in a future income year against which the loss can be deducted.

Summary of new law

6.16 Schedule 6 to this Bill creates an exploration development incentive (EDI) for Australian resident investors in small mineral exploration companies. Investors may be entitled to a refundable tax offset or additional franking credits where the company in which they have invested issues them an exploration credit (a conversion of a tax loss from exploration or prospecting into an immediately distributable tax benefit).

6.17 Companies may issue exploration credits to their shareholders up to a capped amount. A company’s cap for an income year is based on its exploration or prospecting expenditure and tax loss for the previous income year, adjusted by a modulation factor to ensure that the total value of all credits provided in respect of expenditure in an income year does not exceed $25 million for expenditure incurred in 2014-15, $35 million for expenditure incurred in 2015-16 and $40 million for expenditure incurred in 2016-17.

6.18 To give effect to these caps, Schedule 6 to this Bill and the Excess Exploration Credit Tax Bill 2014 require companies that issue exploration credits in excess of their maximum entitlement to pay excess exploration credit tax on the amount of the excess.

Comparison of key features of new law and current law

New law	***Current law***
Eligible mineral exploration companies can utilise their tax losses: • to the extent the loss results from eligible exploration expenditure, to create exploration credits up to their maximum exploration credit entitlement; or • to reduce their taxable income in later years.	Mineral exploration companies can generally only utilise tax losses to reduce their taxable income in later income years.
Australian resident taxpayers that are not corporate tax entities and receive exploration credits are entitled to a tax offset equal to the amount of the credit. For individuals, superannuation funds and certain trustees, this offset will be a refundable tax offset.	No equivalent provisions.
Australian resident trusts and partnerships that receive exploration credits may be able to provide their members with a share of the exploration credit so that their members may obtain the tax offset.	No equivalent provisions.
Australian resident corporate tax entities receiving exploration credits are entitled to a franking credit equal to the amount of the exploration credit.	No equivalent provisions.
Entities that create exploration credits in excess of their maximum exploration credit entitlement will be subject to excess exploration credit tax, and potentially, shortfall penalties in respect of that amount.	No equivalent provisions.

Detailed explanation of new law

6.19 Schedule 6 to this Bill amends the tax law to establish the EDI. There are three key components of the incentive.

6.20 First, this Schedule creates an EDI by way of:

- a tax offset (the EDI tax offset) which is available to certain Australian resident investors that receive exploration credits; and
- additional franking credits for corporate tax entities that receive exploration credits.

6.21 Secondly, it establishes a framework for eligible companies to give up a portion of their tax losses from greenfields minerals exploration to create and issue exploration credits to their shareholders.

6.22 Finally, it introduces the excess exploration credit tax to apply to companies that issue exploration credits in excess of their maximum entitlements.

6.23 Overall, the incentive will allow eligible exploration companies to convert a portion of their tax loss to exploration credits which can be provided to shareholders to entitle the shareholders to a tax benefit.

Exploration development incentive tax offset

Exploration development incentive tax offset — general case

6.24 Schedule 6 amends the ITAA 1997 to introduce a tax offset available to Australian resident taxpayers that receive exploration credits, provided that the taxpayers are not corporate tax entities. ***[Schedule 6, item 2, section 418-10 of the ITAA 1997]***

6.25 The tax offset is generally not available to entities that do not generally pay tax — trusts, partnerships and exempt entities. However, exempt entities that are entitled to a refund of franking credits will also be entitled to the EDI tax offset. Additionally, the EDI tax offset will also be available to certain trusts to the extent that the trustee is subject to income tax as an Australian resident individual, for example, where an Australian resident beneficiary of the trust estate who is under a legal disability and is presently entitled to an amount of the income of the trust (see subsections 98(1), 98(2), 99(2) and 99(3) of the *Income Tax Assessment Act 1936* (ITAA 1936)). ***[Schedule 6, item 2, paragraph 418-10(b) of the ITAA 1997]***

6.26 Consistent with the rules for the tax offset for franking credits, the EDI tax offset is only available to taxpayers that are resident in Australia for the whole of the relevant income year. This addresses integrity concerns around providing offsets to foreign residents who may have no other association with the Australian tax system and who

generally do not interact with the Australian tax system on the same basis as Australian resident taxpayers.

6.27 The amount of the offset in an income year for a particular taxpayer is the value of the exploration credits the taxpayer has received in that income year. The offset will generally be available to the taxpayer in respect of the year following the year in which the company undertaking the exploration incurred its exploration or prospecting expenditure. ***[Schedule 6, item 2, section 418-25 of the ITAA 1997]***

6.28 The offset is refundable to taxpayers with no basic income tax liability that are individuals, superannuation funds and certain charities and not-for-profit entities that are eligible for refunds of franking credits (referred to in the tax law as exempt entities eligible for a refund see Subdivision 207-E of the ITAA 1997). ***[Schedule 6, item 1, item 27 in the table in section 67-23 of the ITAA 1997]***

6.29 As entitlement to the EDI tax offset is likely to vary significantly between income years, the offset will not be taken into account in determining taxpayers' pay-as-you-go instalments. ***[Schedule 6, items 27 to 30, paragraph (h) at the end of step 1 of the method statement in section 45-340 and paragraph (g) at the end of step 1 of the method statement in section 45-375 of the ITAA 1997]***

6.30 This Schedule also amends the general anti-avoidance rules in Part IVA of the ITAA 1936 to apply to the EDI. This will ensure that taxpayers who enter into tax avoidance schemes with the predominant purpose of accessing the EDI will not benefit from the incentive. ***[Schedule 6, items 3 to 15, definitions of 'exploration credit' and 'exploration development tax offset' in subsection 6(1), paragraphs 177C(1)(bba), 177C(1)(fa) and 177C(2A)(c), subsection 177C(3) and paragraphs 177C(3)(cb) and (h), 177CB(1)(da), 177F(1)(d), 177F(1)(e) and 177F(3)(d) to (f) of the ITAA 36]***

Exploration development incentive tax offset — life insurers

6.31 Consistent with the imputation system and the income tax law more generally, these amendments include special rules for corporate tax entities that are life insurance companies. ***[Schedule 6, item 2, section 418-15 of the ITAA 1997]***

6.32 Life insurance companies are eligible to receive the EDI tax offset in relation to some of their exploration credits. Specifically, life insurers hold assets wholly on behalf of their policy-holders rather than for the benefit of their shareholders.

6.33 For the purposes of the income tax law and the imputation system, these assets held on behalf of policy holders are taxed and eligible for refundable imputation credits consistent with the treatment these assets

would receive if they were held in comparable investment arrangements such as superannuation funds or managed investment trusts.

6.34 These amendments provide that life insurance companies will be eligible to obtain the EDI tax offset in the same circumstances they would be eligible to obtain a refundable tax offset under the imputation system. That is, they can obtain the EDI tax offset for that portion of exploration credits they receive in respect of investments they hold on behalf of policy-holders, provided the offset is applied wholly for the benefit of policy-holders. ***[Schedule 6, item 2, paragraph 418-15(1)(d) and subsection 418-15(2) of the ITAA 1997]***

Exploration development incentive tax offset — trusts and partnerships

General rules for trusts and partnerships

6.35 Schedule 6 also provides special rules for trusts and partnerships that are neither corporate tax entities nor exempt entities entitled to a refund. ***[Schedule 6, item 2, section 418-20 of the ITAA 1997]***

6.36 While trusts and partnerships are entities for income tax purposes, they generally do not have income tax liabilities or entitlements of their own. Instead, trusts and partnerships are generally flow-through entities for income tax purposes, with the tax consequences of their entitlements being passed on to their members.

6.37 As a result, trusts and partnerships generally cannot obtain any direct benefit from exploration credits they receive. Instead, where a trust or partnership is issued with an exploration credit or credits in an income year, they may be able to provide a member of the trust or partnership with a statement entitling that member to a share of the exploration credit or credits the trust has received. This statement does not need to accompany the passing along of an amount by the trust or partnership; unlike franking credits exploration credits have no link to a distribution from profits and do not need to follow the benefit of such a distribution. ***[Schedule 6, item 2, subsections 418-20(1) and (4) of the ITAA 1997]***

6.38 The member who received the statement is then entitled to benefit from the EDI themselves as if they had been issued with an exploration credit or credits of that amount directly in that income year.

6.39 If the member is an individual they will be able to obtain the EDI tax offset. If they are a corporate tax entity they will be able to obtain a franking credit. If the member is itself a trust or partnership they will then be able to further pass on the benefit of the credit they have received to their own members.

6.40 The offset is not available to the trust or partnership to the extent a member has been made entitled to part of the tax offset. This ensures that there can be no double benefit from the tax offset in a situation in which the trustee can access a tax offset themselves. ***[Schedule 6, item 2, sections 418-25 and 418-30 of the ITAA 1997]***

Restrictions on providing the benefit of the offset to members

6.41 There are however, a number of restrictions that apply to the transfer of the benefit of an exploration credit to the member of a trust or partnership. A trust or partnership must have regard to the terms of the trust instrument or partnership agreement as they would apply to an equivalent franked distribution when received in the same circumstances when determining shares of exploration credits that can be made available to particular beneficiaries or partners. ***[Schedule 6, item 2, subsection 418-20(2) of the ITAA 1997]***

6.42 For trusts, this means that a beneficiary's share of the exploration credits received by a trust must be the same as the share the beneficiary would be entitled to receive of an equivalent franked distribution from the same source.

6.43 This means that, for example, a beneficiary of a fixed trust who would be entitled to 50 per cent of the income of the trust must receive a 50 per cent share of any exploration credits the trust receives. Equally, a beneficiary of a trust who is only entitled to receive distributions of capital or specific trust income that would not include an equivalent franked distribution cannot be made entitled to any share of the exploration credits the trust has received.

6.44 Where the terms of a trust would allow the trustee discretion as the recipient of an amount of income from an equivalent franked distribution, the trustee would have the same discretion about the distribution of an exploration credit. It is not relevant in exercising this discretion how the trustee has distributed specific amounts of income the trustee may receive, or even that the trustee has not distributed any income from the trust in relation to the relevant income year. However, if the trustee has made a general resolution about how the income of the trust or the income of the trust from franked distributions will be distributed, then this does affect how exploration credits can be passed along.

6.45 For example, if a trustee has resolved to distribute a specific amount to a beneficiary, this will not limit how they may subsequently distribute exploration credits — in this case the resolution is only about a specific amount. However, if the trustee resolved instead that 50 per cent of all franked distribution would be distributed to a specific beneficiary,

this would limit how any exploration credits could be distributed — a distribution would only be consistent with the terms and conditions of the trust where it complied with the general rule. Similarly, if the trust had only resolved to distribute specific amounts but had also resolved that a particular beneficiary was the remainder beneficiary, as the remainder beneficiary would be entitled to the whole amount of the hypothetical franked distribution, the trustee would also be required to provide all exploration credits they wish to provide to beneficiaries to the remainder beneficiary (the same outcome would arise if the trust deed established a default beneficiary).

6.46 For partnerships, the share of exploration credits provided to a partner must also be the same as the share the partners would be entitled to receive of an equivalent franked distribution from the same source. ***[Schedule 6, item 2, subsection 418-20(2) of the ITAA 1997]***

6.47 Where a trust or partnership purports to issue a member with a share that would not be consistent with what a member could receive if the exploration credits were instead a franked distribution, the member will not be able to benefit from the share of the exploration credits.

Example 6.1

Rob is an Australian-resident beneficiary of RK Family Trust, a discretionary trust that has made a family trust election under section 272-80 in Schedule 2F to the ITAA 1936 (with Rob's mother as the eligible individual).

In May 2016, RK Family Trust is issued with exploration credits with a value of $100, by GME Co, a greenfields minerals explorer, in which the trustee of RK Family Trust, Trustee Co, holds ordinary shares on trust.

In June 2016, Trustee Co resolves to determine that Rob is entitled to $50 of the exploration credits it has received from GME Co. It makes a determination that Rob should be entitled to this amount and provides Rob with a statement to this effect in the form approved by the Commissioner of Taxation (Commissioner) (see paragraph 6.67). Trustee Co must provide the statement to Rob by the time Trustee Co must lodge the income tax return for RK Family Trust for the 2015-16 income year.

As a result, Rob is now taken to have been issued with $50 of the exploration credits that were issued to the trust in the 2015-16 income year. As an individual resident in Australia for the relevant income year (the 2015-16 income year) he is entitled to a $50 tax offset in respect of these credits, which he may claim in his tax return for that year.

If the amount of income tax Rob must otherwise pay for the 2015-16 income year is less than the $50 of exploration credits he has received, he will be entitled to a refund of the difference.

To the extent Rob is entitled to this $50 of exploration credits, neither the trust nor any other beneficiary of the trust can benefit from these credits.

As a discretionary trust, the deed of the RK Family Trust places no restrictions on what entitlements can be provided to particular beneficiaries, so there is no restriction of the share of the exploration credits issued to the trust that Rob can receive.

However, if the terms of deed for RK Family Trust did restrict the amount that Rob could receive of a comparable franked distribution from the same source, Rob would not be entitled to the benefit of the exploration credit unless his share of the exploration credit was consistent with the share he could receive of a comparable franked distribution.

6.48 Further, beneficiaries and partners will also not be able to benefit from a share of any exploration credits to the extent that they would not be entitled to obtain a tax offset in respect of a franking credit that relates to a distribution by the trust or partnership of an amount of a franked distribution received by the trust from the same entity or entities, in the same circumstances and in respect of the same interests. ***[Schedule 6, item 2, subsection 418-20(3) of the ITAA 1997]***

6.49 This means that, amongst other things, partners and beneficiaries will need to be able to demonstrate that they have had a sufficiently certain interest in the entity issuing the exploration credits for a long enough period to meet the test to be a qualified person in relation to the hypothetical equivalent franked distribution (see sections 207-145 and 207-150 of the ITAA 1997).

6.50 As a result, the benefit of the EDI will generally not be available to beneficiaries or objects of discretionary trusts as these beneficiaries are not able to demonstrate such an interest. However, a specific exception applies for the beneficiaries of trusts that are the subject of a family trust election; special rules apply that allow such beneficiaries to be treated as qualified persons (see former section 160APHT of the ITAA 1936). An exemption also applies in certain circumstances for certain small shareholders (see former sections 160APHT and 160APHU of the ITAA 1936).

6.51 Beneficiaries will also not receive the benefit of the EDI to the extent they would be exempt from income tax on the amount of the hypothetical franked distribution, or if they have engaged in conduct that

would amount to dividend washing (see section 207-157 of the ITAA 1997).

Example 6.2

> Continuing from Example 6.1, as RK Family Trust has made a valid family trust election, Rob would be a qualified person in respect of a hypothetical equivalent dividend and so is be taken to be entitled to a share of the exploration credits.
>
> However, if RK Family Trust had not made a family trust election he may not have been entitled to a tax offset in relation to an equivalent franked distribution that flowed indirectly to him through RK Family Trust as a result of the integrity rules in Division 207 of the ITAA 1997 and therefore he would not have been entitled to any share of the exploration credits.

6.52 Trusts or partnerships that pass on the benefit of exploration credits they receive to their members must report this to the Commissioner in the approved form. This allows the Commissioner to ensure compliance with the EDI rules through data matching. It also provides the Commissioner with information about taxpayers potentially receiving the offset so that the Commissioner may provide targeted assistance should this be considered necessary (for example, it could be used to pre-fill individual income tax returns with entitlements to the EDI should the Commissioner consider this feasible, practical and appropriate). ***[Schedule 6, item 2, subsection 418-20(5) of the ITAA 1997]***

Trusts that are taxed on income in the trust but are not corporate tax entities

6.53 In certain circumstances trusts (or more specifically, the trustee of the trust) may be obliged to pay tax on the income of the trust rather than, or in addition to, the income being attributed to beneficiaries. This can include, for example, cases where the beneficiary is under a legal disability.

6.54 To the extent that the income of the trust is income of this sort, the trust is entitled to a relevant proportion of the EDI tax offset as a refundable tax offset. ***[Schedule 6, item 2, subparagraph 418-10(1)(b)(ii) and section 418-30 of the ITAA 1997)]***

6.55 However, the offset is not available to the trust to the extent a member has been made entitled to a share of the exploration credit, as outlined in paragraph 6.37.

6.56 The offset is only available in cases where the trustee is taxed on this income as if the trustee were an Australian resident individual and the beneficiary is also an Australian resident individual.

Exploration development incentive tax offset — tax treatment

6.57 Unlike franking credits, no amount is included in a taxpayer's assessable income due to the receipt of the EDI tax offset or the exploration credit.

Exploration development incentive — corporate tax entities

6.58 Corporate tax entities are generally not entitled to the EDI tax offset even where they receive exploration credits.

6.59 Unlike trusts or partnerships, corporate tax entities are not flow-through entities and are subject to tax on their own behalf. However, to reduce double taxation of corporate profits, corporate tax entities are entitled to franking credits where they pay tax or receive franking credits from investments in other corporate tax entities, which they can pass on to their members.

6.60 Due to the operation of the imputation system, providing corporate tax entities with a tax offset provides limited benefits to their members.

6.61 Instead of providing corporate tax entities that receive an exploration credit with an EDI tax offset or allowing them to transfer the exploration credit to their members, they instead receive the same amount as a franking credit in their franking account, arising at the time that the exploration credit is issued.

6.62 Providing the benefit of the EDI in this way allows it to be readily passed on to members of corporate investors without the significant compliance burden that would arise from the creation of a new system to allow for companies to retain and distribute exploration credits. ***[Schedule 6, item 2, section 418-50 of the ITAA 1997]***

Example 6.3

Antony is the sole shareholder in AP Ltd, an Australian resident company. AP Ltd holds a number of the ordinary shares in Grieg Explorations Ltd, a greenfields minerals explorer.

In May 2016, Greig Explorations Ltd issues $120 in exploration credits to AP Ltd.

As AP Ltd is a corporate tax entity. that is not a life insurance company. it is not entitled to receive an EDI tax offset. However, as AP Ltd meets all of the other requirements to receive the EDI tax offset, it is entitled instead to receive a franking credit equal to the amount of the exploration credits it has received.

In June 2016, AP Ltd declares a dividend and pays a distribution to Antony. Assuming the other franking requirements are met, it may use the franking credit that arose from its receipt of the exploration credits to frank this distribution, and provide Antony with a tax offset equal to the amount to the franking credit he received.

6.63 Corporate tax entities that are life insurance companies are only entitled to a franking credit in respect of an exploration credit to the extent that they are not entitled to the EDI tax offset in respect of the credit. ***[Schedule 6, item 2, section 418-55 of the ITAA 1997]***

6.64 That is, consistent with their treatment for imputation, life insurance companies obtain a franking credit in respect of that proportion of a exploration credit they receive attributable to investments they hold on their own behalf, while being entitled to a refundable tax offset in respect of that proportion of an exploration credit they receive that is attributable to investments they hold for their policy-holders.

Creating and issuing exploration credits

Eligibility to issue exploration credits

6.65 Broadly, as outlined above, taxpayers may be entitled to the EDI if they receive an exploration credit or credits.

6.66 Schedule 6 to this Bill provides that exploration credits can be created and distributed in an income year by an entity that was a greenfields minerals explorer in the previous income year.

6.67 However, an entity cannot create exploration credits in an income year (the creation income year) unless they have reported their estimated exploration expenditure and estimated tax loss for the prior income year to the Commissioner in the approved form by 30 September of the financial year corresponding with the creation income year and the Commissioner declared the modulation factor for the credits to be created in that income year. ***[Schedule 6, item 2, section 418-70 of the ITAA 1997]***

6.68 The reporting requirement ensures that the annual caps on the total financial impact of the EDI can operate. See paragraphs 6.119 to 6.127 for a detailed discussion of these caps and this requirement.

6.69 Participation in the EDI by greenfields minerals explorers is completely optional at all stages. An entity that meets the requirements to be a greenfields minerals explorer may choose not to participate at all, may choose to report its estimated expenditure and tax loss for an income year to the Commissioner but then choose not to create credits or even

choose to report and create exploration credits but not issue them (though the latter choice may be disadvantageous for the entity).

Greenfields minerals explorer

6.70 A ***greenfields minerals explorer*** for an income year is an entity that has not carried on any mining operations during the income year or over the immediately preceding income year. Further, no mining operations may have been carried out during this period by another entity that is connected with or an affiliate of the first entity. Consistent with the existing use of the term in paragraph 40-730(7)(a) of the ITAA 1997, mining operations carries its ordinary meaning. ***[Schedule 6, item 2, section 418-75 of the ITAA 1997]***

6.71 'Connected with' and 'affiliate' are both defined within the existing tax law. Broadly, they apply to entities that control the first entity, are controlled by a third entity that also controls the first entity or which the first entity itself controls (see Subdivision 328-C of the ITAA 1997). In this context control may be direct or indirect.

6.72 These limitations reflect that the concession is intended to benefit small mineral exploration companies with limited revenue. Companies that have established mining operations will not be able to access this incentive. The purpose of the EDI is to assist entities obtain capital to support greenfields exploration and prospecting, reflecting the particular challenges faced in obtaining capital at this stage of the life cycle of a project when returns are highly speculative. Once entities that have identified mineral resources and commenced mining operations, their ability to raise funds is significantly improved and they are no longer in need of the support of the EDI. Further, they are no longer engaging in greenfields exploration or prospecting which is what the EDI is intended to support. As a result where an entity has recently been engaged in mining operations it will not be entitled to be a greenfields mineral explorer and access the EDI.

6.73 Similarly, entities that may themselves be small but which form part of a larger grouping of entities, some of which engage in mining, will not and are not intended to be able to participate in the EDI. While these entities may themselves be small, they are part of a wider economic structure that includes entities that have found or are in the process of exploiting known mineral resources. Again, where an entity is part of a wider economic structure that has recently been engaged in mining operations it will not be entitled to be a greenfields minerals explorer and access the EDI.

6.74 A ***greenfields minerals explorer*** must also be a disclosing entity (within the meaning of section 111AC of the *Corporations Act 2001*) and

a constitutional corporation. ***[Schedule 6, item 2, paragraphs 418-75(1)(b) and (c) of the ITAA 1997]***

6.75 The requirement that a greenfields minerals explorer be a disclosing entity is intended to achieve two purposes. First, it targets the concession to entities that are seeking to raise capital from the general public, maximising the potential effect of the incentive (and reducing the scope for manipulation that might apply for closely-held entities). Secondly, it also excludes the need to establish a new reporting regime for greenfields minerals explorers — instead companies will be able to provide the same information for the purposes of the EDI and *Corporations Act 2001*.

6.76 The requirement that the entity be a constitutional corporation ensures that a refund of the EDI tax offset is appropriately supported by the constitutional powers of the Commonwealth.

6.77 Finally, a ***greenfields minerals explorer*** must incur greenfields minerals expenditure in the relevant income year. ***[Schedule 6, item 2, paragraph 418-75(1)(a) of the ITAA 1997]***

Greenfields minerals expenditure

6.78 Expenditure related to exploration and development of mineral resources is already subject to a number of concessions and special rules in the income tax law.

6.79 Amongst other things, entities are generally entitled to immediately deduct all expenditure incurred on exploration and prospecting (section 40-730 of the ITAA 1997). While the purpose of this provision is to ensure that entities are able to immediately deduct capital expenditures which otherwise would not be immediately deductible, it applies to all expenditure for exploration or prospecting, whether capital or revenue, other than those relating to depreciating assets (see paragraphs 7.7 to 7.28 of the explanatory memorandum to the New Business Tax System (Capital Allowances) Bill 2001) and subject to the rules around amounts that would be able to be deducted under a number of provisions.

6.80 A list of the activities that are included in the definition of exploration and prospecting is set out in subsection 40-730(4) of the ITAA 1997. While this list is not exhaustive, it does detail the principal types of qualifying expenditure. Not included is administrative expenditure. Section 40-730(1) is quite specific that the deduction it provides extends only to expenditure on exploration and prospecting, not related expenditure such as administration costs.

6.81 Entities are also generally entitled to immediately deduct the cost of depreciating assets used in these activities (see sections 40-25 and 40-80 of the ITAA 1997, noting changes made in relation to mining information by the *Tax and Superannuation Laws Amendment (2014 Measures No. 3) Act 2014*).

6.82 Schedule 6 provides that an entity's ***greenfields minerals expenditure*** will be the sum of the amounts that it can deduct, that are amounts of expenditure on exploration and prospecting for minerals (but not petroleum or oil shale) of a sort described in subsection 40-730(1) which also meets the conditions set out in that subsection. ***[Schedule 6, item 2, paragraph418-80(1)(b) of the ITAA 1997]***

6.83 In some cases an amount may be potentially deductible under both subsection 40-730(1) and another provision in the ITAA 1997, such as the general deduction provisions (section 8-1) or the specific deduction for making a loss from a profit making undertaking or plan (section 25-40). In this case the amount will be deductible under only the most appropriate provision — see section 8-10 of the ITAA 1997.

6.84 The EDI is intended to cover all exploration expenditure, whether or not it is deductible as a result of section 40-25, 40-730 or another provision of the tax law if that provision overlaps with section 40-730. To ensure this, the greenfields minerals expenditure includes all amounts of expenditure that:

- are deductible; and
- meets the description and in relation to which the entity satisfies requirements of subsection 40-730(1), regardless of whether this provision is the one that makes them deductible.

6.85 Consistent with the discussion in paragraph 6.80, this means that greenfields minerals expenditure includes amounts of expenditure of the sort set out in subsection 40-730(4), but does not include administration costs and similar expenditure that, while it may be related to the activities of the entity, is not expenditure on exploration and prospecting.

6.86 This also means that if an amount would be deductible under subsection 40-730(1), but is not deductible because of some other provision, the relevant amount is not greenfields minerals expenditure.

6.87 Greenfields minerals expenditure is also defined to include all deductions for declines in value of depreciating assets used in exploration and prospecting which are immediately deductible because of section 40-80 of the ITAA 1997. ***[Schedule 6, item 2, paragraph 418-80(1)(a) of the ITAA 1997]***

6.88 However, there are a number of qualifications on what exploration expenditure will constitute greenfields minerals expenditure to ensure that amounts are sufficiently connected to exploration and prospecting in greenfields areas.

6.89 First, the expenditure must be incurred in an eligible greenfields area — that is, an area within the land territory of Australia where the entity holds a suitable right or interest and in which minerals of the sort being explored for have not already been identified. ***[Schedule 6, item 2, subsection 418-80(3) of the ITAA 1997]***

6.90 These exclusions reflect various policy considerations. Encouraging exploration outside Australia is not within the scope of the EDI and so expenditure in relation to such activities is excluded. Similarly, as the EDI is not targeted to exploration for petroleum, which is the only significant form of offshore exploration, exploration expenditure incurred in relation to Australia's sea and seabed territory is excluded.

6.91 The EDI is also not intended to benefit contractors and similar entities who incur exploration expenditure as part of providing a service to another entity and so only expenditure incurred in relation to an area over which the entity holds a mining, quarrying and prospecting right will count as exploration expenditure. In this context, it is important to note that mining, quarrying and prospecting right has a very wide definition. It includes not just any sort of right or licence under an Australian law, but also a lease permitting prospecting for minerals and any sort of interest in a right, permit or lease. This means that it includes farm-in, farm-out arrangements and other forms of contingent interests in the underlying right.

Example 6.4

Big Co is a large multinational mining company. Amongst its other assets, it holds an exploration licence in relation to Area A. It has undertaken preliminary exploration activities in Area A and, based on the results from these activities, has decided that pursuing further exploration in that area is a low priority.

Small Co is a small mineral exploration company. It is interested in exploring within Area A. Big Co and Small Co reach an agreement under which Big Co agrees to transfer Small Co a part of Big Co's interest in Area A after one year if Small Co undertakes agreed exploration and prospective activities in Area A over that period.

The agreement with Big Co provides Small Co with a contingent interest in the exploration licence for Area A held by Big Co. This interest meets the definition of a mining, quarrying and prospecting right under the ITAA 1997. If Small Co is a greenfields mineral

explorer and its expenditure in relation to Area A meets the other requirements, this expenditure may be greenfields minerals expenditure.

6.92 The EDI is intended to support greenfields exploration — it is targeted to initial speculative activities where capital constraints are likely to be particularly acute. Even once a mineral resource has been identified, there is considerable work to be done in developing the identified resource into a mining operation. However, at this stage, raising capital is quite a different proposition, and assistance in the form of the EDI is less warranted. As a result, the EDI does not apply to expenditure in relation to an area where the existence of a mineral resource has been identified. In most cases, a mineral resource will be considered to have been identified where it has been identified as at least an inferred mineral resource in a report complying with the Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves (commonly referred to as the JORC Code). However, an alternative standard may be specified by regulations.

6.93 However, this restriction does not apply in respect of expenditure incurred in relation to a resource of a different sort to those identified in the report. ***[Schedule 6, item 2, subsection 418-80(4) of the ITAA 1997]***

6.94 While most entities engaged in exploration will generally have significant market incentives to prepare reports that comply with the JORC code (and in some cases may be required to do so by their market disclosure obligations) the tax law does not generally oblige them to do so.

6.95 However, these amendments do provide the Commissioner with the power to request that an entity that is a greenfields minerals explorer prepare a report that complies with the JORC code. The Commissioner is only expected to request such a report where he or she is of the opinion that an inferred mineral resource has been identified and the EDI is not intended to support the ongoing activities of the entity. ***[Schedule 6, item 2, subsection 418-80(5) of the ITAA 1997]***

6.96 If a greenfields minerals explorer does not prepare a such report in the manner, form and time required by the Commissioner (including for example, having the competent person for the report being an independent person) the entity will cease to be a greenfields minerals explorer for the current income year and future income years. ***[Schedule 6, item 2, subsection 418-75(2) of the ITAA 1997]***

6.97 This power ensures the Commissioner can prevent an entity from obtaining an undue benefit by deliberately delaying quantifying the extent of its mineral discoveries.

6.98 Secondly, amounts of deductions will not be permitted to the extent that they relate to activities that are outside of the purpose of the EDI. ***[Schedule 6, item 2, subsection 418-75(2) of the ITAA 1997]***

6.99 As a result, where an amount is, for example, an amount of expenditure in part for exploration and prospecting for minerals, but also for some other purpose, the amount of the deduction is included as greenfields minerals expenditure only to the extent that it relates to exploration and prospecting for minerals.

6.100 Likewise, reflecting the particular policy of the EDI, certain limits are placed on the types of minerals and exploration activities to which deductions must relate to to be greenfields minerals expenditure. As a result, amounts deductible in relation to expenditures solely for the purpose of identifying the viability, as opposed to the existence, quantity, quality or location of a resource, such as feasibility studies, are also excluded even where they fall within the boundaries of expenditures deductible under subsection 40-730(1). While these activities are an important part of the development of mining projects, they represent a step beyond the initial exploratory stage of expenditure that the EDI is targeted to support.

6.101 Similarly, amounts deductible in relation to exploration and prospecting for petroleum (or oil shale, which is used for the production of petroleum) are, to this extent, not greenfields minerals expenditure, despite petroleum being included in the definition of minerals under the income tax law.

Entities with substituted accounting periods

6.102 Some entities have an income year that does not correspond with the financial year.

6.103 Substituted accounting period entities are able to access the EDI in the income years in which it is available, in the same way as entities with a standard reporting period — that is, they may create exploration credits in the 2015-16, 2016-17 and 2018-19 income years based on their estimated and actual tax loss and greenfields minerals expenditure in the previous income year (the 2014-15, 2015-16 and 2016-17 income years respectively). It is not relevant that the income years for these taxpayers cover different dates than the income years of taxpayers with a standard reporting period.

6.104 The required dates for reporting, creating and issuing credits and other actions under the EDI are the same for all entities, including entities with a substituted accounting period. This means that, for example, all entities that wish to create exploration credits in the 2015-16 income year

must report their estimated greenfields minerals expenditure and tax loss for the prior (2014-15) income year by 30 September 2015. This is the case even for those entities with a substituted account period whose 2014-15 income year may not have ended. For these entities, an estimate will be required in relation expenditure they still expect to incur during the remainder of their income year.

Creating exploration credits — amounts and consequences

6.105 Entities that are greenfields minerals explorers may choose to create exploration credits in an income year. The amount of an entity's tax loss for the previous income year is reduced to reflect the amount of the exploration credits it creates. ***[Schedule 6, item 2, section 418-95 of the ITAA 1997]***

6.106 The amount of the credits an entity chooses to create must not exceed its maximum exploration credit amount, which is the smallest of its:

- estimated tax loss for the prior income year reported to the Commissioner (see paragraph 6.67);
- estimated greenfields minerals expenditure for the prior income year reported to the Commissioner (see paragraph 6.67);
- actual tax loss for the prior income year; and
- actual greenfields minerals expenditure for the prior income year,

multiplied by the corporate tax rate for the prior income year and the modulation factor declared by the Commissioner.

[Schedule 6, item 2, subsections 418-85(1) and (2) of the ITAA 1997]

6.107 There are two components to the maximum exploration credit amount. First, entities may only issue credits up to the amount of the lesser of their tax loss or greenfields minerals expenditure in the prior income year. As outlined previously, the purpose of the EDI is to allow small mineral exploration companies to transfer the benefit of that part of their tax loss that arose from exploration to their shareholders. Allowing them to exceed the amount of either their tax loss or their exploration expenditure would provide a greater and unintended benefit not related to greenfields exploration.

6.108 Secondly, the amount of exploration credits an entity may issue must not exceed the estimates of its loss and expenditure in the prior income year that it has provided to the Commissioner (see paragraph 6.67). This ensures that the modulation process operates correctly and applies fairly to all participants.

6.109 Any credits the entity creates above its maximum exploration credit entitlement are excess exploration credits.

6.110 In some circumstances an entity will incur a deductible amount of expenditure in one income year for which it is subsequently reimbursed, in what is referred to as a assessable recoupment (see Subdivision 20-A of the ITAA 1997). The amount of any recoupment which gave rise to a deduction is generally included in the taxpayer's assessable income in order to ensure the taxpayer does not benefit from an expense that they did not ultimately bear.

6.111 Similarly, there are circumstances in which an entity will become entitled to obtain a deduction in respect of the decline in value of an asset then, subsequently dispose of the asset or otherwise cease to use the asset in a way that would result in the entity no longer bearing the full cost of the asset for which they claimed a full deduction. In these cases the entity will need to include an amount in their assessable income, referred to as a balancing adjustment which has the effect of reducing the deduction.

6.112 If an entity receives a recoupment or has a balancing adjustment in respect of an entity's greenfields minerals expenditure for an income year, the entity's actual loss and actual greenfields minerals expenditure for that income year must be reduced by the amount of the recoupment or balancing adjustment. This ensures that the entity is not able to obtain a benefit from losses or outgoings that it has not ultimately borne and is not able to transfer losses which are effectively recouped in a later year. ***[Schedule 6, item 2, subsections 418-85(3), (4) and (5) of the ITAA 1997]***

6.113 There are also circumstances in which an entity may have incurred a tax loss in respect of an income year but may no longer be able to make use of this loss. ***[Schedule 6, item 2, subsections 418-85(3) and (4) of the ITAA 1997]***

6.114 This can occur where there is a change in ownership or control of the entity or a change in the entity's activities that results in the entity ceasing to satisfy the continuity of ownership and control tests and the same business test during the period between when the expenditure is incurred and the end of the income year in which credits are created (see Divisions 165 and 166 of the ITAA 1997).

6.115 It may also occur where an entity became part of a consolidated group after incurring the expenditure. In this situation, while the group is treated as a single entity for most income tax purposes, including the EDI, the group's access to the losses of the entity may be limited (see Division 707 of the ITAA 1997 on losses transferred into a consolidated group and the available fraction). A further case where an entity may not be able to fully access its losses is where the entity has earned exempt income in the income year in which the credit is created (see Division 36 of the ITAA 1997).

6.116 Where an entity does cease to be able to access some or all of its losses for the prior year, it must accordingly reduce its actual loss for that year for the purposes of determining its maximum exploration credit amount. ***[Schedule 6, item 2, section 418-95 of the ITAA 1997]***

6.117 In the case of losses, unlike recoupments and balancing adjustments, there are no consequences if an entity ceases to be able to use a loss for an income year after the income year in which the entity creates exploration credits.

6.118 If as a result of a recoupment, balancing adjustment or a loss ceasing to be able to be utilised, an entity has a lower maximum exploration credit amount for that income year, any credits the entity creates or has created above this reduced amount will be excess exploration credits and the entity will be subject to excess exploration credit tax which seeks to claw back the excess tax benefits passed onto to shareholders.

Creating exploration credits — the modulation factor

6.119 The total financial impact of the EDI is capped for each of the three income years in which it operates. This global cap is implemented by imposing a limit on the value of the exploration credits entities may issue, based on the total value of exploration credits that could be issued by all entities in that year. Schedule 6 provides that this limit, referred to as the modulation factor, is to be determined by the Commissioner. ***[Schedule 6, item 2, step 3 in the method statement in subsection 418-85(2) and section 418-90 of the ITAA 1997]***

6.120 As the modulation factor will affect the amount of exploration credits that can be created, no entity can create exploration credits in an income year before the modulation factor for that year has been declared by the Commissioner.

6.121 The Commissioner will determine the modulation factor as soon as practicable after the date entities are required to report their estimates of their tax loss and greenfields minerals expenditure (30 September of the relevant financial year). It is expected that this will be done by the Commissioner as soon as is practicable after entities report their estimates, and no later than 1 January of the relevant financial year.

6.122 As the modulation factor must be set at a level to ensure the total amount of exploration credits issued does not exceed the cap, it can only be determined once the full value of the exploration credits that can be claimed is known. Determining this based on entities' actual loss and expenditure for an income year would require deferring the issue of the modulation until all greenfields minerals explorer have received their income tax assessment for the relevant income year. This would result in a very significant lag in the issuing of credits.

6.123 To reduce this lag, the cap is instead based on entities' estimates of their tax loss and greenfields minerals expenditure for the relevant income year, which must be reported to the Commissioner by 30 September in the financial year corresponding with the following income year. However, for the cap to be effective when determined using estimated tax losses and expenditure, the amount of exploration credits that can be created must also be no greater than the amount of these estimates.

6.124 The Commissioner's declaration of the modulation factor for an income year is a legislative instrument, but is not subject to disallowance. The declaration is essentially the result of a mechanical calculation by the Commissioner. More significantly, the modulation factor has immediate consequences for commercial and corporate arrangements. Revising or withdrawing the modulation factor after entities have begun the process of creating or issuing credits would undermine these arrangements and potentially expose taxpayers to significant compliance costs and penalties in respect of something that is wholly beyond their control. Therefore, it is not appropriate for the legislative instrument to be subject to Parliamentary disallowance. ***[Schedule 6, item 2, subsection 418-90(6) of the ITAA 1997]***

6.125 To protect taxpayers from similar issues in the event of an error by the Commissioner, the validity of the Commissioner's declaration of the modulation factor for an income year is not affected if the Commissioner errs in complying with the exact technical process set out for the calculation of the modulation factor. ***[Schedule 6, item 2, subsection 418-90(5) of the ITAA 1997]***

6.126 The choice whether or not to create exploration credits for an income year must be made on or before 30 June of the financial year corresponding with the income year. The choice is final and irrevocable — if a taxpayer chooses to create credits of a particular amount, or does not choose to create credits by the relevant 30 June, it is not possible to subsequently change this decision. Greenfields minerals expenditure that is not used to create exploration credits cannot be carried forward for the purpose of creating credits in subsequent income years. ***[Schedule 6, item 2, subsection 418-70(5) of the ITAA 1997]***

6.127 Ensuring the decision to create credits cannot be revised or undone, ensures that the entitlements of recipients of exploration credits will be fixed and avoids the complexities and potential abuses that might result from the creation of exploration credits at different times in an income year. It also minimises compliance costs for greenfields minerals explorers and their members as well as administration costs for the Commissioner.

Example 6.5

GME Co is a publicly listed mineral exploration company that holds a number of exploration licences covering areas of South Australia.

In 2014-15, GME Co incurs significant expenditure exploring for minerals in the areas covered by its exploration licences.

GME Co decides that it may wish to access the EDI in respect of its exploration expenditure in 2014-15. It identifies that it is a greenfields minerals explorer for 2014-15 as at no time in the past year has GME Co or any of its connected or affiliated entities carried on any mining operations and it meets all other requirements to be a greenfields minerals explorer.

To ensure it is eligible to access the EDI and issue credits in respect of this expenditure in 2014-15, GME Co must also report its estimated tax loss and greenfields minerals expenditure for 2014-15 to the Commissioner by 30 September 2015. On 28 September 2015, GME Co declares to the Commissioner that its estimated tax loss and greenfields minerals expenditure for 2014-15 are $1.2 million and $1 million respectively.

On 1 December 2015, the Commissioner determines the modulation factor for exploration credits issued in 2015-16 to be 0.5. Following this, on 1 December 2015, GME Co lodges its tax return for 2014-15 and receives its assessment. Consistent with its estimate, GME Co has a tax loss of $1.2 million and has incurred greenfields minerals expenditure of $1 million.

> As a result, GME Co's maximum exploration credit amount is $150,000. This amount is the product of the least of its actual and estimated tax loss and greenfields minerals expenditure in 2014-15 ($1,000,000), the corporate tax rate for 2014-15 (0.3) and the modulation factor determined by the Commissioner (0.5).
>
> GME Co chooses to create exploration credits up to its maximum exploration credit amount — $150,000. As a result of creating these credits GME Co foregoes an equivalent amount of its tax loss for 2014-15 — $500,000 (calculated as the amount of exploration credits created ($150,000) divided by the corporate tax rate for the relevant income year (0.30)).

Issuing exploration credits

6.128 An entity that has created exploration credits may choose to issue some or all of those exploration credits to its shareholders whose shares are equity interests (shareholders) (see the rules for debt and equity interests in Division 974 of the ITAA 1997). ***[Schedule 6, item 2, section 418-110 of the ITAA 1997]***

6.129 If the entity does choose to issue exploration credits, the amount issued to each shareholder must be in proportion to the number of shares in the entity that are equity interests (shares) the shareholder holds as a proportion of the total equity shares in the entity. ***[Schedule 6, item 2, section 418-120 of the ITAA 1997]***

6.130 Unlike access to franking credits, the issue of exploration credits to shareholders is not linked to a distribution out of profits. As a result, the rules that generally apply around the distribution of profits under the *Corporations Act 2001* do not apply to the issuing of exploration credits.

6.131 In the absence of any link to the rules applying to distributions, Schedule 6 requires exploration credits be issued strictly in proportion to the number of shares that each shareholder holds. This results in a straightforward method of allocation amongst the entities that participate in the economic risk of exploration.

6.132 One exception applies to this rule. Before an entity issues any exploration credits, it may elect to restrict the availability of the EDI to shares issued on or after 1 July 2014.

6.133 The principal purpose of the EDI is to provide an incentive for investment. This purpose could be achieved by restricting the incentive to new capital issued after the incentive has been announced.

6.134 However, the compliance costs associated with this approach may be significant — at a minimum, greenfields minerals explorers would

need to arrange for separate listing or trading of pre-EDI and post-EDI interests. Taking into account these compliance costs, exploration credits generally must be issued to all entities holding shares in the greenfields minerals explorer.

6.135 Some entities, though, may consider bearing these costs to be worthwhile given the additional incentive confining the EDI to new capital provides for new investment. To accommodate these cases, Schedule 6 provides greenfields minerals explorers with the option to choose for the incentive to be available only for shares issued on or after 1 July 2014. To avoid ongoing complexity, this choice is irrevocable and must be made before an entity has ever issued any exploration credits. ***[Schedule 6, item 2, section 418-115 and paragraph 418-120(1)(a) of the ITAA 1997]***

6.136 Entities that issue exploration credits must notify the Commissioner in the approved form. If the entity is an investment body under section 202D of the ITAA 1936 this notification must be provided at the same time as the annual investment income report for the entity. Otherwise, the notification must be lodged at the same time as the entity's income tax return for the relevant income year. ***[Schedule 6, item 2, section 418-130 of the ITAA 1997]***

6.137 Exploration credits that are created but not issued before 30 June in the financial year corresponding with the income year in which they are created cease to exist. The expiry of a credit means that it cannot be issued, but does not undo the effect the creation of the credit had on the entity's tax loss or any of the consequences that arose from the creation of the exploration credit. This ensures fairness amongst entities participating in the EDI. ***[Schedule 6, item 2, section 418-125 of the ITAA 1997]***

6.138 Entities must also report to the Commissioner on any exploration credits they create which expire. ***[Schedule 6, item 2, section 418-130 of the ITAA 1997]***

Example 6.6

Continuing from Example 1.4, GME Co chooses to issue the $150,000 of exploration credits it has created to its shareholders on 1 June 2016.

GME Co has only one class of shares, with 6 million shares on issue. Its shares are held by a number of entities, including Investor Co, which holds 300,000 shares.

GME Co must issue exploration credits to shareholders in proportion to the fraction of the total shares in GME Co that they hold.

This means that Investor Co receives $7,500 of exploration credits or 5 per cent of the total of $150,000 of credits as it holds 5 per cent of the issued shares of GME Co (300,000 out of 6 million).

As Investor Co is a corporate tax entity, it is not entitled to claim a tax offset in respect of the credits in its tax return for the 2015-16 income year. Instead, when Investor Co receives the exploration credit (1 June 2016), it receives a credit in its franking account equal to the amount of the exploration credit ($7,500).

After distributing exploration credits, GME Co must report to the Commissioner in the approved form on or before the date when it must lodge its annual investment income report for 2015-16 — which is likely to be 31 October 2016 (subject to the Commissioner providing otherwise).

Excess exploration credit tax

6.139 Under the provisions set out in Schedule 6, entities may not issue exploration credits in excess of the maximum exploration credit amount.

6.140 However, breaches of the cap can occur for a number of reasons. In some cases the breach may not be identified for a number of years — for example, if the entity made an error in determining its tax loss for the income year that was only identified in a subsequent audit by the Commissioner.

6.141 Where such a breach of the cap is found, it would generally be inappropriate to penalise the recipients of these credits for matters that are generally entirely beyond their control (however, different circumstances may be triggered where the general anti-avoidance rules applies). Instead, where it is identified that excess exploration credits have been issued, the entity that issued credits in excess of its cap will be subject to excess exploration credit tax on the amount by which the cap for the relevant year was exceeded. ***[Schedule 6, item 2, subsection 418-85(6) and section 418-150 of the ITAA 1997, and the Excess Exploration Credit Tax Bill 2014]***

Example 6.7

In May 2016, SP Ltd determined that, for the 2014-15 income year, it had an actual tax loss of $100,000 and actual minerals exploration expenditure of $125,000. In its report to the Commissioner, it had estimated its tax loss to be $110,000 and its mineral exploration expenditure to be $150,000.

Based on these figures, and the Commissioner's determination of a modulation factor of 0.5 for 2015-16, SP Ltd works out its maximum exploration credits amount for 2015-16 to be $15,000, calculated as the product of:

- the least of its actual and estimated tax losses and exploration expenditure for 2014-15 — $100,000;
- the corporate tax rate for 2014-15 — 0.3; and
- and the modulation factor determined by the Commissioner for 2015-16 — 0.5

In June 2016, SP Ltd issues exploration credits to its shareholders up to its maximum exploration credit cap — $15,000. It also reduces its tax loss accordingly (by $50,000 to $50,000).

Subsequently, in October 2016, SP Ltd is audited by the Commissioner. In the course of this audit, it is identified that SP Ltd, despite taking reasonable care, has made an error in the calculation of its tax loss for the 2014-15 income year, and the amount of its tax loss should only have been $50,000.

The change in SP Ltd's actual tax loss for the 2014-15 income year reduces its maximum exploration credit amount to $7,500 (calculated as $50,000 × 0.3 × 0.5). To the extent the amounts of credits SP Ltd has issued exceed this amount, SP Ltd is liable for excess exploration credit tax of an amount equal to the excess — $7,500. This does not affect the validity of the excess exploration credits in the hands of SP Ltd's shareholders. The change in SP Ltd's actual tax loss also means that its remaining tax loss after issuing exploration credits is $0.

As SP Ltd had an excess exploration credit tax liability for the 2015-16 income year, it was required to provide the Commissioner with a return for excess exploration credit tax and pay the amount of its liability by 21 days after the end of the 2015-16 financial year — 21 July 2016.

As SP Ltd was not aware of its liability at this time it did not do so. Instead, after receiving its amended assessment for income tax, SP Ltd then provides the Commissioner a return and payment in relation to its excess exploration credit tax liability for the 2015-16 income year. SP Ltd is the taken to have been assessed as having a liability of that amount.

As payment was made after the due date, SP Ltd is liable for general interest charge in relation to the amount for the period between the due date and the date payment was made. SP Ltd may apply to the Commissioner for remission of this interest and this request would be a matter for the discretion of the Commissioner having regard to all the circumstances.

6.142 Rather than introducing a new assessment regime, Schedule 6 includes excess exploration credit tax in the general tax assessment regime set out in Division 155 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). ***[Schedule 6, items 30 and 31, paragraph 155-5(2)(g) and item 4 in the table in subsection 155-15(1) in Schedule 1 to the TAA 1953]***

6.143 Excess exploration credit tax will operate on a full self-assessment basis, broadly consistent with the franking deficit tax. An entity that incurs a liability for excess exploration credit tax in a year must provide the Commissioner with an excess exploration credit tax return in the approved form within 21 days of the end of the financial year corresponding with the income year. ***[Schedule 6, item 2, section 418-160 of the ITAA 1997]***

6.144 This return will give rise to an assessment of this amount, which will be payable at the same time as lodgement. The Commissioner is generally able to amend this assessment for up to four years after the assessment has been deemed to be made (see Subdivision 155-B in Schedule 1 to the TAA 1953). ***[Schedule 6, items 30 and 31, paragraph 155 5(2)(g) and item 4 in the table in subsection 155-15(1) in Schedule 1 to the TAA 1953]***

6.145 Underpayments of excess exploration credit tax will be subject to the shortfall interest charge until the underpaid amount is included in an amended assessment. Likewise, if any amount of the liability remains unpaid after the due date for payment of excess exploration credit tax for an income year, the general interest charge will apply in respect of the unpaid excess exploration credit tax (and any unpaid shortfall interest charge) until the tax and interest is paid. ***[Schedule 6, items 2 and 33, sections 418-165 and 418-170 of the ITAA 1997 and section 280-101 in Schedule 1 to the TAA 1953]***

6.146 Overpaid amounts of excess exploration credit tax are treated in the same way as overpayments of income tax under section 172 of the ITAA 1936. That is, they can be applied against other tax debts, allocated to a running balance account of the taxpayer or refunded. ***[Schedule 6, item 2, section 418-175 of the ITAA 1997]***

6.147 Taxpayers are required to keep the same records for the purposes of the excess exploration credit tax as they are under section 262A of the ITAA 1936 for income tax. ***[Schedule 6, item 2, section 418-180 of the ITAA 1997]***

Additional consequences of issuing excess exploration credits

6.148 A variety of additional consequences may apply in circumstances where a taxpayer incurs a liability for excess exploration credit tax.

6.149 In particular, the amendments provide that the amount of excess exploration credit tax is also a shortfall amount for the purposes of the administrative penalties provisions of the Division 284 in Schedule 1 to the TAA 1953.

6.150 To the extent an entity has a shortfall amount that has arisen due to a failure to take reasonable care, recklessness or intentional disregard of the tax law, the entity is liable for administrative penalties. As a result, where an entity incur excess exploration credit tax they may also be liable for administrative penalties. ***[Schedule 6, item 36, item 5 in the table in subsection 284-80(1) in Schedule 1 to the TAA 1953]***

6.151 Schedule 6 also provides that the Commissioner may, by written notice, determine that an entity that has incurred a liability for excess exploration credit tax will no longer be a greenfields minerals explorer and may no longer participate in the EDI. This determination has effect for exploration credits issued after the notice of the determination has been received by the entity. ***[Schedule 6, item 2, subsection 418-75(2) and section 418-185 of the ITAA 1997]***

6.152 It is expected in exercising this discretion that the Commissioner will take into account the circumstances in which the excess exploration credits were created and the degree of the entity's culpability (or lack thereof). Factors that are likely to suggest that the discretion should not be exercised are that the amount was small, the error occurred despite the entity taking reasonable care and the entity reported the error to the Commissioner when it became aware it had occurred. Factors that are likely to suggest that the discretion should be exercised are that the amount of the excess credits was significant relative to the entity's maximum exploration credit amount, the excess arose as a result of a deliberate decision, recklessness or carelessness and the entity did not report error or did not provide appropriate assistance to the Commissioner in identifying or remedying the error.

6.153 The EDI is a concessional regime provided to a very limited class of entity. Similar to other comparable regimes such as the research and development tax incentive, the Commissioner is provided with a power to exclude subsequent access to the scheme by taxpayers who have been identified as seeking to make inappropriate use of the concession. This also protects other genuine participants in the scheme.

Example 6.8

> Continuing from Example 1.6, the amounts of SP Ltd's excess exploration credit tax liability would also be a shortfall amount under section 284-80 in Schedule 1 to the TAA 1953.

As SP Ltd took reasonable care to comply with its tax obligations, it will not be subject to any administrative penalty as a result of this shortfall amount.

If SP Ltd had failed to take reasonable care or had not taken a reasonably arguable position where one was required, or if the shortfall amount had arisen because SP Ltd was either reckless or intentionally disregarded a taxation law, SP Ltd would be subject to an administrative penalty under Division 284 in Schedule 1 to the TAA 1953.

Additionally, as SP Ltd has incurred a liability for excess exploration credit tax, the Commissioner has the power to determine that SP Ltd will not be a greenfields minerals explorer for the purposes of subsequent participation in the EDI.

The exercise of this power is a matter for the Commissioner's discretion. However, given that in this case the liability arose despite SP Ltd taking all reasonable care, absent further factors it is expected that the Commissioner would not chose to exercise this discretion.

6.154 The Commissioner's determination is subject to merits review in the manner set out in Part IVC of the TAA 1953. ***[Schedule 6, item 2, subsection 418-185(3) of the ITAA 1997]***

Consequential amendments

6.155 A number of consequential amendments are made to the tax law, especially to guide material, checklists and definitions, to reflect the introduction and operation of the EDI. ***[Schedule 6, items 2, 16 to20, 22, 24 to 27, 28, 33 and 35 to 36, sections 418-1 and 13-1, item 1 in the table at the end of section 36-25, section 197-42, item 7 in the table in subsection 205-105(1), item 8 in the table in subsection 219-15(2), the definitions of 'annual investment report', 'excess exploration credit tax', 'exploration credit', 'greenfields minerals expenditure', 'greenfields minerals explorer', 'maximum exploration credit amount' and 'tax loss' in subsection 995-1(1) of the ITAA 1997, item 16A in the table in subsection 8AAB(4) of the TAA 1953 and the method statements in sections 45-340 and 45-375, item 38D in the table in subsection 250-10(2), paragraph 280-105(1)(a) and subsections 280-110(1) and 284-80(1) in Schedule 1 to the TAA 1953]***

Application and transitional provisions

6.156 The measure applies to greenfields minerals expenditure for the 2014-15, 2015-16 and 2016-17 income years, allowing the distribution of credits in the 2015-16, 2016-17 and 2017-18 income years. ***[Schedule 6, item 73]***

6.157 The amendments will be automatically repealed following the general expiry of the income tax amendment period. ***[Schedule 6, items 38 to 72]***

6.158 However, the operation of the repealed law will be preserved in relation to the period of the law when the EDI applied. ***[Schedule 6, items 74 to 79]***

6.159 Contingent amendments are also included to take into account changes proposed by the Treasury Legislation Amendment (Repeal Day) Bill 2014. ***[Schedule 6, items 21 and 23, subparagraphs 418-80(2)(b)(ii) and (iii) and the definition of 'annual investment income report' in subsection 995-1(1)]***

REGULATION IMPACT STATEMENT

Introduction

6.160 On 3 September 2013, the Coalition made an election commitment to introduce an Exploration Development Incentive to encourage investment in small exploration companies undertaking greenfields mineral exploration in Australia. The incentive applies to eligible exploration from 1 July 2014 and will provide refundable tax offsets to Australian resident shareholders of small mineral exploration companies for Australian greenfields mineral exploration undertaken by those companies. The scheme will initially apply for three years and its cost capped at $100 million.

Overview of the resource exploration sector

6.161 Resource exploration represents a small share of the Australian economy. However, exploration is important as a precursor to resource development and extraction.

6.162 In 2012-13, exploration expenditure was around $7.8 billion, equivalent to about half of one per cent of gross domestic product (GDP). Resource extraction on the other hand, accounted for around 9 per cent of GDP.[2]

[2] Figures include petroleum exploration and extraction.

6.163 The resources sector also accounted for approximately 2-2½ per cent of all employment in Australia in 2011-12, or almost 10 per cent of the total if both direct and indirect employment in the resources sector is taken into account. Employment in resource exploration accounts for 0.2 per cent of national employment.

6.164 The Productivity Commission considers that exploration is broadly classified as greenfields or brownfields. Greenfields exploration is the exploration of unexplored or incompletely explored areas directed at discovering new resources. Brownfields exploration occurs in areas near established resources or in areas where resources have been mined in the recent past, and is mainly focused on proving up reserves or extending existing mining operations.[3]

6.165 Most greenfields mineral exploration is undertaken by 'junior explorers' with millions of dollars of capitalisation, while large companies with established resource extraction operations, billions of dollars in assets and multinational operations, perform most brownfields exploration.

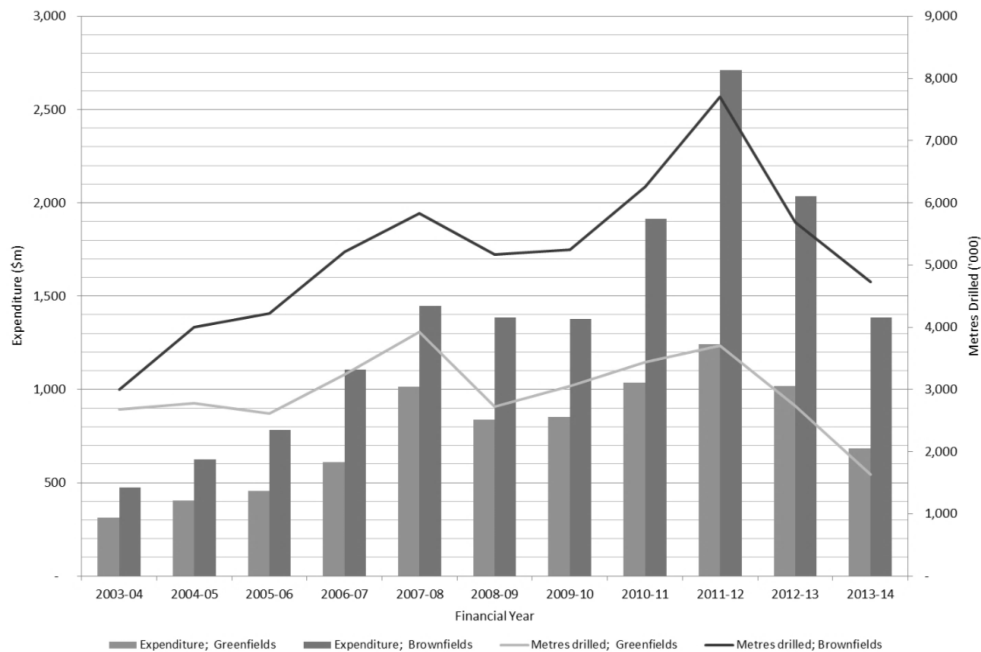
6.166 The level of greenfields exploration in Australia is generally measured in two ways: expenditure; and metres drilled. While greenfields exploration expenditure has remained relatively stable in real terms over recent years, it has fallen as a proportion of total exploration from 40 to 33 per cent over the last decade.[4]

6.167 It is important to note that any increase in the level of greenfields exploration expenditure may not translate into a greater level of metres drilled. This is because the average cost per metre drilled has doubled in real terms since the late 1990s.[5] Similarly, any increase in metres drilled does not necessarily indicate an increase in geographic coverage, but rather may indicate an increase in depth or resource definition; reflecting an increasing focus on the potential for deposits under deep cover.

6.168 The lowest level of greenfields metres drilled in the last decade was in 2013-14 (Diagram 2.1). It is also worth noting that relevant data on greenfields and brownfields exploration was not published by the Australian Bureau of Statistics prior to 2003. A representation of exploration statistics over a longer time period can therefore not be provided.

3 Productivity Commission (2013). *Mineral and Energy Resource Exploration*.
4 Productivity Commission (2013). *Mineral and Energy Resource Exploration*.
5 Productivity Commission (2013). *Mineral and Energy Resource Exploration*.

Diagram 6.1 — Greenfields and Brownfields Minerals Exploration (Expenditure and Metres Drilled)



- Source: Australian Bureau of Statistics (2014). *Mineral and Petroleum Exploration, Australia* (8412.0)*, Table 2: Mineral exploration (other than for petroleum).*

Problem

6.169 The Government's election commitment to introduce an Exploration Development Incentive acknowledges that the future prosperity of the mining sector and the Australian economy is dependent on our ability to make new mineral discoveries.[6] A strong resource exploration sector is the key to replenishing and maintaining a stream of new resource projects.

6.170 Feedback received from consultation suggests that the junior mineral exploration sector in Australia is struggling for two key reasons: a tax disadvantage junior companies face relative to larger mining and exploration companies, and the general difficulty in attracting the capital

[6] *Coalition's Policy for Resources and Energy* September 2013.

necessary to conduct greenfields exploration. Some in the sector have argued that these issues constitute a market failure.[7]

6.171 One problem for junior explorers with no production and therefore no (or little) assessable income, is that they face a tax disadvantage relative to larger mining and exploration companies. These larger companies have assessable income against which exploration expenditures can be claimed as an immediate tax deduction. While a tax deduction allows a company with assessable income to reduce its tax liability, a company will not gain any immediate benefit from its deductions when they exceed its assessable income. The company can only carry forward these deductions as losses at zero interest to offset against future income.

6.172 This difference in tax treatment is a source of non neutrality in the tax system that favours companies with profits against which to offset expenses over companies that accumulate losses they are unable to utilise. Arguably, this area of non neutrality in the tax system has an acute impact on junior exploration companies that may need to wait many years before their losses can be utilised, and many will never generate sufficient income to utilise their losses.

6.173 This effectively makes exploration more expensive for junior explorers, relative to companies with ongoing sources of income (that is, companies with extraction operations), likely reducing the level of greenfields exploration undertaken in the economy.

6.174 Junior explorers' inability to immediately use their deductions also makes them less attractive on the stock market, relative to companies that have income to claim their deductions against and profits for distribution to shareholders. Unlike many other sectors, it is possible for junior exploration companies to post losses for many years. It is important to note this is largely a function of geology and other factors intrinsic to this industry, which are out of the explorer's control. Even a low-cost exploration company with highly-trained personnel face the prospect of simply never discovering a resource of sufficient value to warrant exploitation, given prevailing market prices. The accumulation of these losses, combined with the seemingly low prospect that a junior explorer will ever turn a profit in such a high risk industry, puts these companies in a difficult position in terms of raising capital.

[7] Cairns C, Hronsky J and Schodde R (2010), *Market Failure in the Australian Mineral Exploration Industry: The Case for Fiscal Incentives*; Association of Mining and Exploration Companies (2012), *Submission to The Treasury – Business Tax Working Group re The Tax Treatment of Losses*.

6.175 Junior exploration companies are often funded by small capital raisings through initial public offerings (IPOs). Recent analysis suggests that junior exploration companies are finding it increasingly difficult to attract capital. HLB Mann Judd[8] writes:

> *While resource stocks have dominated the statistics in recent years, this was not the case in 2013. A combination of falling commodity prices and reduced investor sentiment appear to have had a negative impact on resource IPOs during 2013.*
>
> *There was very little [stock exchange] activity from those companies with market caps of less than $10 million in 2013, with only four companies of this size successfully concluding listings during the year. This has historically been a market position occupied by junior exploration companies and the low volumes reflect the difficult conditions currently facing this sector.*

6.176 The 2013 IPO activity continues a downward trend that has been evident for a number of years. In 2011, the amount of capital raised by small capital IPOs on the Australian Securities Exchange (ASX) was 17 per cent lower than in 2010, despite a 10 per cent increase in the number of small capital IPOs on the ASX.[9] In 2012, the number of small capital IPOs was over 50 per cent lower than in 2011, with capital raised falling by more than 63 per cent on 2011 levels.[10] As capital becomes more difficult to raise, the negative impact on the level of greenfields mineral exploration in Australia and the sustainability of the broader resources sector will become more pronounced.

6.177 The nature of greenfields exploration, along with several challenges unique to the industry, contributes to the difficulty junior exploration companies face raising capital.

6.178 Greenfields minerals explorers face a significant and unavoidable delay between the time the exploration company is created and exploration activity commences. This delay is further exacerbated by delays usually encountered before revenue can be earned from a new discovery that develops into a commercial resource extraction operation. Once a commercial resource has been discovered, it will typically take at least ten years to convert the deposit into a revenue producing mine. To the typical investor, these delays reflect poorly on junior exploration

---

[8] HLB Mann Judd (2014). *IPO Watch*.
[9] Schodde and Guj, University of Western Australia (2012). *Where are Australia's mines of tomorrow?*
[10] HLB Mann Judd (2013). *IPO Watch*.

companies and their ability to turn a profit. In contrast, start-up businesses in other industries can go from concept to operation in the space of a year.

6.179 One of the main differences between junior exploration companies and start-up companies in other sectors is their respective ability to identify, develop and market a saleable product in a timely manner. While market research by both junior explorers and other types of businesses can be undertaken to improve the prospect of selling a product, a junior explorer will not know with any great accuracy the quality or quantity of the product they will be able to provide for some time. Combined with the timeframes outlined above, this can potentially be decades into the future and significantly impact on the risk profile of the company and its attractiveness to potential investors.

6.180 The risks and delays associated with the need to have community acceptance, or a social license to operate, are other factors that arguably impact more on junior exploration companies than companies in other sectors. The perception that exploration companies negatively impact the environment also makes it harder for them to raise capital.

6.181 All of these factors impact on the ability of junior exploration companies to raise the capital needed to undertake greenfields mineral exploration. The amount of investment in exploration affects the ability of Australia's resources sector to sustain strong growth and maintain its contribution to the national economy over the medium to long term.[11] As most of Australia's major discoveries were made more than twenty years ago, additional investment is required to discover and develop high quality resources that will sustain this contribution.

6.182 In order to attract investment, resource companies generally look for shorter-term revenue streams to satisfy shareholders and investors. For major resource companies, this can mean focusing on existing projects, at the expense of longer-term options such as greenfields investment. The high risk nature of greenfields exploration, coupled with periods when the global capital market is constrained, results in larger organisations seeking to lower the risk in their investment portfolios. This, in turn, means that most greenfields exploration is left to the junior sector. It is estimated that in South Australia, 56 per cent of greenfields

[11] Policy Transition Group (2010). *Minerals and Petroleum Exploration*.

exploration was undertaken by junior explorers in 2013.[12] More anecdotal evidence puts this estimate at up to 95 per cent in some regions.[13]

6.183 In recent years, brownfields exploration has been relied on to meet the significant increase in demand for Australia's resources. Such exploration is used to increase the resource base and production capacity of existing operations and known resource regions. It also helps companies retain investor attention by releasing a constant flow of drill intersections and defined results. Brownfields exploration can be more profitable than greenfields exploration because of the lower incremental cost of exploiting deposits that have ready access to existing infrastructure or processing facilities. The shorter lead times from exploration to discovery for brownfields projects can allow companies to capitalise on the 'window of opportunity' offered by high commodity prices. Development approval requirements for new mines are also significantly greater than those required for expansions of existing mine sites.

6.184 There are industry concerns about the sustainability of Australian mining in the medium term given the increasing focus on brownfields exploration. Existing known deposits may last many years at the current rate of extraction, but new deposits are more likely to be found in more remote greenfields locations, may be of lower grade, deeper in the ground, mixed with greater impurities and/or require more difficult and costly exploration and extraction techniques. As a result, more 'effort' will be needed to produce each unit of resource output, and the measured productivity of exploration (that is, eventual resource extraction) will decline.

6.185 As noted above, greenfields exploration is generally higher risk and can be a long-term investment. There is a high possibility that, even after a new ore body has been discovered, it will ultimately prove to be of insufficient quantity or quality and uneconomic to produce given prevailing market prices and conditions. Mineral exploration is also capital intensive and requires approximately $5-7 million for an average drilling program.[14]

6.186 Much of Australia has only been explored at a reconnaissance level, or to shallow depths, and large areas of the more remote, buried frontier provinces still remain under-explored. Junior explorers are often

[12] South Australian Chamber of Mines and Energy (SACOME) submission to the Department of Industry.
[13] CPS Capital submission to the Department of Industry.
[14] Association of Mining and Exploration Companies (AMEC) submission to the Department of Industry.

more entrepreneurial than larger explorers and producers, and accept the risks inherent with greenfields exploration in the hopes of selling discoveries to established producers with the experience and financial capacity to develop mines. Consequently, a strong junior sector is needed to search for the next generation of Australia's mineral deposits.

6.187 Without further investment in greenfields mineral exploration, the national resource inventory will decline. This represents a significant cost to the Australian economy when considered in the context of recent analysis that suggests that about half of Australia's non-bulk commodities mines will be exhausted in between 7 and 18 years.[15]

Objectives

6.188 The objective of Government action is to increase greenfields mineral exploration by incentivising investment in junior mineral exploration companies.

6.189 The Exploration Development Incentive was announced on 3 September 2013 by the then Shadow Minister for Energy and Resources, and was outlined in the *Coalition's Policy for Resources and Energy* September 2013 (see Table 6.1).

Table 6.1 — The Coalition's Election Commitment

The Coalition will introduce an Exploration Development Incentive that will allow investors to deduct the expense of mining exploration against their taxable income. Under our scheme, the Australian Taxation Office will determine a proportion of expenses that can be claimed as tax credits by investors. Our scheme will target small exploration companies by limiting eligibility to companies with no taxable income. Our scheme will start for investments made from 1 July 2014. The scheme will be capped at $100 million over the forward estimates. The Coalition will get the exploration industry back on its feet following the devastating loss of confidence for investment in mineral exploration in Australia caused by the Rudd-Gillard Government's introduction and gross mishandling of the MRRT.

[15] Schodde and Guj, University of Western Australia (2012). *Where are Australia's mines of tomorrow?*

> The future prosperity of the mining sector and the Australian economy is dependent on our ability to make new mineral discoveries.
>
> The Exploration Development Incentive will provide incentives for minerals exploration activity, with a focus on the small and mid-tier exploration sector.
>
> Under the proposed program, a tax credit will be provided to Australian resident shareholders for eligible 'green fields' exploration expenditure incurred in Australia. A 'no taxable income' test will ensure that the program is only available to junior minerals explorers.
>
> Final implementation details will be determined in consultation with peak industry representative bodies, and will be reviewed every twelve months. Subject to these review outcomes, the program may be extended for a further period.

Options

6.190 This regulation impact statement assesses the impacts of the Government's election commitment to introduce the Exploration Development Incentive. Consistent with the requirements set out in *The Australian Government Guide to Regulation*, alternatives to the election commitment are not required to be considered in this regulation impact statement. Rather, it focuses on the commitment and how the commitment should be implemented.

Net Benefit

6.191 The Exploration Development Incentive is expected to attract additional investment in small companies undertaking greenfields mineral exploration. Additional exploration activity will lead to increased employment. Stakeholder feedback suggests this increased investment will also have a significant multiplier effect.[16] Long term benefits include new mineral discoveries, and in turn, new mines. Such benefits would include the possibility of new infrastructure in regional areas, new and diversified employment opportunities, and increases in royalty and taxation revenue.

[16] CPS Capital submission to the Department of Industry

6.192 Since private sector investor behaviour is presumably driven by costs and benefits of investment, the Exploration Development Incentive should increase investment in junior exploration companies. However, the extent to which the scheme changes investor behaviour, or redirects private sector capital from other sectors toward junior mineral explorers, is difficult to quantify, particularly given current uncertainty on the likely level of participation in the scheme. Likewise, the lag between discovery and mineral extraction means that the net benefit of the scheme will materialise some time in the medium or long term.

6.193 An accurate assessment of the net benefit of the scheme could therefore only be determined if it were possible to compare:

> the actual contribution to the economy of all successful and unsuccessful exploration made possible by investment attributable to the Exploration Development Incentive (and any mine that results from it)
>
> with
>
> the actual contribution to the economy of every other venture, potentially in another sector, that an investor may have chosen to invest in had they not been influenced by the Exploration Development Incentive.

6.194 Given the impracticality of such an exercise, precise calculations of the fiscal benefit to the greenfields exploration industry or the broader economy are not available. However, it is possible to describe in more broad terms the potential net benefit that could arise, given the observable benefits to the wider economy of mining projects more generally.

6.195 The introduction of the Exploration Development Incentive increases the incentive for investors to favour shares in junior exploration companies compared to the absence of such a scheme. This is because they would effectively be 'cheaper' given the associated tax benefits. It follows that greater investment in junior explorers increases the likelihood of the discovery of further economically recoverable resources. Accordingly, any longer term development of a mining operation as a result of this increased exploration activity may yield a significant benefit to the economy.

6.196 Stakeholders have identified the range of benefits that mining operations usually deliver, and that broadly could be attributable to the implementation of the Exploration Development Incentive, noting that the magnitude of such benefits will be dependent on the level of participation in the scheme:

- a longer term increase in net taxation revenue from the industry;
- an increase in jobs;
- an increase in the value of the industry;
- improving the low discovery rates of new mines;
- a reverse of the ongoing reduction in the global share of Australian greenfields exploration activities; and
- an increase in the low number of IPOs for mineral projects in Australia.[17]

6.197 Modelling undertaken by KPMG on the Mineral Exploration Tax Credit (a similar policy design to the Exploration Development Incentive, but without a financial cap) found that a multiplier factor of two in additional exploration activity would conservatively result in:

- potential to provide a positive annual tax revenue stream to Government of up to $283 million;
- up to 4,356 additional jobs across the whole mining sector; and
- contributing an additional $2.2b in GDP across the mining sector.

6.198 Further, AMEC estimates that with a $100 million cap, the Exploration Development Incentive will represent at least $350 million in eligible exploration expenditure and create approximately $1 billion in subsequent economic activity.[18]

[17] SACOME and AMEC submissions to the Department of Industry.
[18] AMEC submission to the Department of Industry.

Impact Analysis

Impact on Industry

6.199 Industry has advocated the introduction of an incentive to promote mineral exploration by small exploration companies for many years. The Exploration Development Incentive is seen by industry as a positive policy solution to the problems identified above.

6.200 There is a lack of Australian-centric data to accurately determine the level of investment that would occur when the Exploration Development Incentive is implemented. However, industry bodies report anecdotal evidence from members that the policy would result in a net positive impact on investment.

6.201 A similar program implemented in Canada ('Flow Through Shares') has helped junior mining companies raise CAD$5 billion over five years,[19] and resulted in significant new discoveries.

6.202 Participation in the Exploration Development Incentive is not compulsory; companies must make a conscious decision to participate. Those that choose to participate will have the ability to pass on a portion of their eligible tax losses (in the form of exploration credits) to their shareholders. This will give their shareholders an entitlement to a refundable tax offset.

6.203 Junior exploration companies that choose to participate in the Exploration Development Incentive will face small additional compliance costs. These costs generally result from the need to:

- report additional information on the nature of their exploration expenditure;
- divert, employ or engage additional resources to manage administrative requirements (including training those resources); and
- update systems and procedures to accommodate the requirements of participating in the scheme.

[19] *Canada's Economic Action Plan – Junior Mineral Exploration*: http://actionplan.gc.ca/en/initiative/junior-mineral-exploration.

6.204 The information required by a company to participate in the Exploration Development Incentive will be broadly similar to the type of information currently needed to complete the company's tax return, report on their exploration activity to state/territory governments, and report to the ASX. In this regard, it is anticipated that the compliance costs of collecting additional information will be minor, as the information required should be readily available. However, participating companies will identify and provide some additional information to the Australian Taxation Office (ATO), such as greenfields exploration expenditure, and will inform shareholders of the company's intentions.

6.205 Consultation with stakeholders supports the compliance cost calculations outlined in this RIS.[20] The design of the Exploration Development Incentive is consistent with earlier models of similar schemes proposed by the industry. Like the Exploration Development Incentive, the design of these schemes was cognisant of minimising the administrative burden. The additional time and cost will come in the form of providing the appropriate reporting measures under the legislation. Stakeholders are of the view that these small costs are outweighed by the benefits of the policy.

6.206 Companies that choose to participate in the Exploration Development Incentive may require additional work from accountants to ensure compliance and manage the administrative requirements of the scheme. For instance, following the application of the cap, companies will need to work out the losses they can convert into exploration credits and the resulting exploration credits available to shareholders. Additional financial advice may also be required on the economic impact of a company relinquishing their entitlement to tax losses.

6.207 Companies may choose to make minor modifications to their financial management systems and procedures to facilitate participation in the Exploration Development Incentive.

6.208 These additional costs were considered in consultations with a range of industry stakeholders. Based on those consultations, average annual compliance costs of $1,144 were calculated for a typical junior exploration company using the Office of Best Practice Regulation's Business Cost Calculator.

6.209 To determine an average annual cost of compliance for the broader minerals exploration sector, it is necessary to estimate the level of industry participation in the scheme.

[20] AMEC and SACOME submissions to the Department of Industry

6.210 According to data sourced from the Australian Bureau of Statistics, on average 133 companies reported a non-zero amount for greenfields exploratory drilling each quarter during the period July 2010 to June 2013. To formulate an estimate of how many companies will undertake greenfields mineral exploration each year from July 2014, a simple assumption has been made that there will be 133 separate and distinct active companies each quarter; resulting in an annual estimate of 532 companies undertaking greenfields mineral exploration. In reality, the figure is likely to be lower given that some companies' drilling operations may continue into the subsequent quarter.

6.211 To account for companies that had a taxable income (and would not be eligible for the scheme), this figure has been reduced by 25 per cent — consistent with analysis undertaken by KPMG[21] — resulting in an estimate of 400 eligible mineral exploration companies per year. Given recent declines in exploration activity and the financial difficulties faced by the junior exploration sector, this is likely to be a considerable overestimate of eligible companies.

6.212 It is important to note that due to the voluntary nature of the scheme, it is unlikely that all eligible exploration companies will participate, although it is not possible to know the extent of non-participation. This makes it very difficult to quantify overall participation and therefore the associated cost of compliance.

6.213 While feedback from consultation with industry bodies indicates that eligible companies 'are likely to participate in the Exploration Development Incentive',[22] there are several factors that will ultimately determine the proportion of eligible companies that will choose to participate. For example, there will be cases where an eligible junior explorer anticipates a possible future revenue stream from a resource discovery in the short to medium term. In such cases, that company may determine that the project cash flow benefit of retaining accumulated losses to reduce any future tax liability outweighs the benefit of participating in the Exploration Development Incentive. Eligible companies may also decide not to participate in the scheme if, in their view, the expected size of the benefit available for distribution to shareholders is not sufficient enough to influence shareholder investment behaviour. Similarly, where the administrative costs of distributing the credits exceed the value of the credits that could potentially be distributed, companies may choose not to participate.

---

[21] KPMG (2013). *Impact of the Mineral Exploration Tax Credit (METC)*

[22] SACOME submission to the Department of Industry

6.214 There is also a possibility that investment at the beginning of the scheme will be subdued due to explorers and investors deferring investment to learn from first movers.

6.215 On the available evidence, it is difficult to draw a conclusion on the percentage of eligible companies that will participate in the scheme. Based on the discussion above, it is clear that not all eligible companies will participate.

6.216 Perhaps the best indication of potential take-up of the scheme, at least in the immediate term, is a measure of how many companies currently hold sufficient cash to undertake eligible exploration activities. A recent survey of junior mining and exploration companies found that in 2014, 50 per cent of companies surveyed had a cash balance of under $2 million. Further, 18 per cent of companies surveyed in 2014 had a cash balance of less than $500,000.[23] As previously stated, exploration is capital intensive and requires approximately $5-7 million for an average drilling program. This means that without additional funding, many companies will not be in position to undertake eligible activities, at least not in the immediate future. These companies will not be eligible to participate in the scheme.

6.217 As such, a conservative estimate of 50 per cent participation in the Exploration Development Incentive has been adopted to calculate the average annual cost of compliance. However, reflecting uncertainty about the extent of participation, the annual average cost of compliance for the mineral exploration sector has been presented as a range, assuming 10 per cent, 20 per cent and 50 per cent of eligible companies will participate.

6.218 No significant risks have been raised by industry during consultation. Industry bodies have expressed a slight risk of estimations for the modulation factor to be incorrect at the time of calculation due to unforeseen circumstances (that is, geological in nature) in the financial year arising from higher than expected expenditure. However, in discussions with explorers likely to take advantage of the Exploration Development Incentive, this risk is minimal and companies are confident that an accurate assessment of expenditure can be provided.

Impact on Stakeholders

6.219 The compliance costs for shareholders arising from the Exploration Development Incentive will be small relative to the tax

[23] Grant Thornton Australia, *2014 Junior Mining and Exploration Survey*.

benefits that they will receive. While shareholders will be required to identify any exploration credits received when completing their income tax return each year, this will be a relatively small addition to existing requirements. There will be no cost for investors in a company that does not participate in the scheme.

Impact on Government

6.220 The cost of the Exploration Development Incentive is capped at $100 million. Exploration credits are capped at $25 million for exploration expenditure incurred in 2014-15, $35 million for exploration expenditure incurred in 2015-16 and $40 million for exploration expenditure incurred in 2016-17. Where the cost of the Incentive is less than the cap for any given year, the caps applying to subsequent years will not be adjusted.

6.221 In the short-term, implementation costs will be incurred to draft the legislative amendments. There will also be costs incurred to review the Exploration Development Incentive.

6.222 The ATO will incur costs in administering the scheme and ensuring compliance. New administrative arrangements and education products will be required to support the Exploration Development Incentive. Any integrity requirements will be designed with a view to minimising compliance costs on shareholders and mineral exploration companies, while still providing the necessary protection to revenue.

Consultation

6.223 In designing the Exploration Development Incentive, the Government has undertaken consultation with peak industry bodies, shareholder representative groups and other interested parties. Consultation included multiple face to face meetings, as well as the public release of a discussion paper that provided stakeholders the opportunity to provide feedback on the design of the scheme.

6.224 On 2 July 2014, operational details for the Exploration Development Incentive were released to reduce uncertainty for small mineral exploration companies and their investors ahead of release of the legislation that will give effect to the measure.

6.225 On 10 October 2014, draft legislation and explanatory materials were released for public consultation. Submissions closed on 24 October 2014.

6.226 In preparing this regulation impact statement, targeted and public consultation has been undertaken with peak industry bodies and interested parties to help assess the impact of the Exploration Development Incentive on industry.

6.227 The ATO is also consulting with peak industry bodies and interested parties on the administrative arrangements for the scheme.

6.228 The majority of interested parties support the introduction of the Exploration Development Incentive, and have expressed interest in such a scheme for some time. Industry bodies consider it to be a long term investment strategy for Australia's mineral resources sector, and exhibit a sense of optimism that this scheme will deliver similarly successful results to the Canadian 'flow through shares' scheme.

6.229 There is overwhelming agreement amongst most stakeholders that compliance costs will remain minimal, particularly when set against the expected benefits. The main limitation identified was the cap of $100 million over the forward estimates. This is generally considered too small based on the expected demand for the scheme.

6.230 Some stakeholders have expressed the view that no market failure exists preventing an efficient level of investment in greenfields projects. Accordingly these stakeholders consider there will only be limited take-up of the Exploration Development Incentive. This appears to be a minority view based on the consultation that has been undertaken.

Conclusion

6.231 The Government is proceeding to implement its election commitment to introduce an Exploration Development Incentive. The mineral exploration industry has advocated the introduction of such a scheme for many years.

Conclusion and recommended option

6.232 The Exploration Development Incentive commenced for exploration expenditure incurred from 1 July 2014. Schedule 6 to the *Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014* amends the income tax law to implement the scheme.

6.233 The key risk to implementation of the Exploration Development Incentive is the timely passage of legislation through Parliament. The ATO requires sufficient time to develop and implement the necessary

administrative processes for the scheme. This risk is being managed by consulting early and regularly with the ATO on the administration of the incentive.

6.234 The Department of Industry will monitor greenfields exploration and the scheme throughout its operation, with a review of the scheme in 2016. Key performance indicators for the scheme, against which the review will be conducted, will be finalised by the end of 2014. Subject to the outcome of the review, the programme may be extended for a further period.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 — Exploration development incentive

6.235 Schedule 6 to the Bill and the Excess Exploration Credit Tax Bill 2014 are 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

6.236 Schedule 6 to the Bill and the Excess Exploration Credit Tax Bill 2014 introduce an exploration development incentive by amending the *Income Tax Assessment Act 1997* (ITAA 1997) and other tax legislation to provide a tax incentive to encourage investment in small mineral exploration companies undertaking greenfields mineral exploration in Australia. Australian resident investors of these companies will receive a tax incentive where the companies choose to give up a portion of their losses relating to their exploration expenditure in an income year.

6.237 The total value of the tax incentives available to taxpayers in respect of expenditure in an income year is restricted to $25 million for greenfields minerals expenditure incurred by eligible companies in 2014-15, $35 million for greenfields minerals expenditure incurred in 2015-16 and $40 million for greenfields minerals expenditure incurred in 2016-17.

6.238 The incentive is not available in respect of for expenditure incurred in income years after 2016-17.

Human rights implications

6.239 Schedule 6 and the Excess Exploration Credit Tax Bill 2014 do not engage any of the applicable rights or freedoms.

6.240 The measure affects only a small group of companies (mineral exploration companies) and their shareholders, and simply allows the company to convert a tax loss into a more immediate benefit for shareholders.

6.241 The exploration development incentive regime does result in differing treatment for residents and non-residents. This is consistent with the well-established body of international law and practice that differential tax (and social security) treatment of residents and non-residents does not constitute discrimination, but is an appropriate recognition of the differing circumstances of these entities.

Conclusion

6.242 Schedule 6 and the Excess Exploration Credit Tax Bill 2014 are compatible with human rights as they do not raise any human rights issues.

Chapter 7
Miscellaneous amendments

Outline of chapter

7.1 Schedule 7 to this Bill makes a number of miscellaneous amendments to the taxation and superannuation laws. These amendments are part of the Government's commitment to the care and maintenance of the taxation and superannuation systems.

7.2 These amendments include style changes, the repeal of redundant provisions, the correction of anomalous outcomes and corrections to previous amending Acts.

Context of amendments

7.3 Miscellaneous amendments to the taxation and superannuation laws such as those contained in Schedule 7 are periodically made to remove anomalies and correct unintended outcomes. Progressing such amendments gives priority to the care and maintenance of the tax system, a process supported by a 2008 recommendation from the Tax Design Review Panel.

7.4 Industry input is collected through the Tax Issues Entry System (TIES). Part 1 of Schedule 7 addresses two TIES issues:

- ensuring that taxpayers are not inappropriately denied automatic roll-over relief for balancing adjustments in relation to certain depreciating assets (TIES reference number 005/2011); and
- allowing corporate limited partnerships to effectively return capital to partners without anomalous tax outcomes (TIES issue 0009/2014).

Summary of new law

7.5 These miscellaneous amendments address technical deficiencies and legislative uncertainties within several taxation and superannuation provisions.

7.6 Schedule 7 contains the following Parts:

- Part 1: Amendments commencing on the day after Royal Assent.
- Part 2: Other Amendments .

Detailed explanation of new law

Part 1: Amendments commencing on the day after Royal Assent

Harmonisation of the self-actuating system for indirect taxes with the self-assessment system for income tax

7.7 The *Indirect Tax Laws Amendment (Assessment) Act 2012* harmonised the self-actuating system for goods and services tax, luxury car tax, wine equalisation tax and fuel tax credits with the self-assessment system for income tax. Minor technical amendments are made to ensure that the legislation achieves the intended policy outcomes.

7.8 Prior to the amendments in this Part, section 17-15 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provided that a taxpayer's net amount for a tax period was calculated from the information provided in their goods and services tax (GST) return. This outcome is now achieved through the assessment making process in section 155-15 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). Therefore, section 17-15 of the GST Act is removed as it is redundant. ***[Schedule 7, item 1, section 17-15 of the GST Act]***

7.9 Prior to the amendments in this part, subsection 31-15(3) provided that a GST return could state an entity's net amount as worked out under section 17-5 rather than as provided in the approved form for the GST return. Subsection 31-15(3) was included in the GST Act because section 17-15 provided an alternative means of working out the net amount. However, with the repeal of section 17-15, subsection 31-15(3) is also repealed as it is redundant. ***[Schedule 7, item 2, subsection 31-15(3) of the GST Act]***

7.10 The repeal of section 17-15 and subsection 31-15(3) applies to tax periods starting after the day this Bill receives Royal Assent. ***[Schedule 7, item 3]***

7.11 Before the amendments, section 93-15 of the GST Act denied an input tax credit where the GST had 'ceased to be payable'. The term 'ceased to be payable' is used in section 105-50 of Schedule 1 to the

TAA 1953. This section sets a four-year time limit on recovery by the Commissioner of Taxation (Commissioner) by stating that an unpaid amount 'ceases to be payable four years after it became payable by you'.

7.12 Section 105-50 does not apply to tax periods starting on or after 1 July 2012 and is repealed on 1 January 2017 (see Part 2 of Schedule 1 to the *Indirect Tax Laws Amendment (Assessment) Act 2012*).

7.13 This amendment updates the terminology in section 93-15 so that it does not use the term 'ceased to be payable'. The new wording makes it clear that an entitlement to an input tax credit ceases when the Commissioner is no longer able to amend an assessment of the assessable amount relating to the GST. ***[Schedule 7, item 5, section 93-15 of the GST Act]***

7.14 The amendment applies to creditable acquisitions for which the GST on the related supply is attributable to tax periods starting after the day this Bill receives Royal Assent. ***[Schedule 7, item 6]***

7.15 Before the amendments, the time limit for objecting to a private indirect tax ruling for tax periods starting on or after 1 July 2012 was the later of:

- 60 days after the ruling was made; or
- four years from the day after the notice of assessment was given for the tax period to which the ruling relates.

7.16 This time limit posed two difficulties. Firstly, it allowed taxpayers an unlimited objection period where they had not received a notice of assessment. Secondly, it resulted in the time limit for objecting to private indirect tax rulings differing from the time limit for objecting to other private rulings that do not relate to indirect tax. This is inconsistent with the intention of applying rules for indirect taxes that are consistent with the self-assessment system for income tax.

7.17 This amendment ensures that taxpayers who do not receive a notice of assessment do not have an unlimited period to lodge an objection, and aligns the time limit for objecting to private indirect tax rulings with the time limit for objecting to other tax rulings. It sets the time limit for objecting to a private indirect tax ruling as the later of:

- 60 days after the ruling was made; or
- four years after the last day that a return can be lodged concerning the assessment of the assessable amount to which the ruling relates.

[Schedule 7, item 36, paragraph 14ZW(1AAC)(b) of the TAA 1953]

7.18 The amendment to the time limit for objecting to a private indirect tax ruling applies to tax periods starting after the day this Bill receives Royal Assent. It also applies to payments or refunds that do not correspond to any tax period, but relate to liabilities or entitlements that arise after the day this Bill receives Royal Assent. ***[Schedule 7, item 37]***

Updates to the section references in the Excise Act 1901

7.19 Section 5 of the *Excise Act 1901* states that offences against the Act are punishable by a penalty that does not exceed the penalty specified in the section that was contravened. Before the amendments, section 5 included the words '(except as provided by sections 129 to 132, inclusive)' to allow for more serious penalties in certain circumstances.

7.20 The words in brackets in paragraph 7.19 above are now redundant as the penalty provisions in sections 129 to 132 have been repealed. Accordingly, this amendment deletes the words in brackets. ***[Schedule 7, item 7, section 5 of the Excise Act 1901]***

7.21 Prior to the amendments, subsection 116(2) of the *Excise Act 1901* provided for goods sold or offered for sale in breach of paragraph 120(iiia) to be forfeited to the Crown. However, there is no paragraph 120(iiia) in the *Excise Act 1901*.

7.22 This amendment corrects the section reference in section 116 so that it refers to paragraph (iiia) of subsection 120(1), rather than paragraph 120(iiia). ***[Schedule 7, item 8, subsection 116(2) of the Excise Act 1901]***

Clarification of the corporate limited partnership provisions (TIES issue 0009/2014)

7.23 Division 5A of the *Income Tax Assessment Act 1936* (ITAA 1936) operates to, broadly, treat certain limited partnerships as companies for income tax purposes. The Division operates so that, so far as is relevant, any payment made by a corporate limited partnership to its partners that is paid or credited against profits or in anticipation of profits is deemed to be a dividend paid out of profits (section 94L). As a result, the payment is assessable to the partner as a dividend under section 44.

7.24 Section 44 was amended in 2010 as a consequence of changes to the meaning of a dividend in the *Corporations Act 2001*. The effect of the amendment to section 44 is to treat a dividend paid out of an amount other than profits to be a dividend paid out of profits for the purposes of the income tax law (subsection 44(1A)).

7.25 Prior to the introduction of subsection 44(1A), a distribution made by a corporate limited partnership paid or credited against

partnership capital would not have been assessable under section 44 as it was not deemed to be a dividend paid out of profits.

7.26 When subsection 44(1A) was introduced, there was no intention to change the circumstances in which section 94L operates to deem a distribution made by a corporate limited partnership to be a dividend paid out of profits.

7.27 This miscellaneous amendment clarifies that subsection 44(1A) does not operate for the purposes of determining whether a payment made by a corporate limited partnership is taken to be a dividend under section 94L. ***[Schedule 7, item 9, section 94L of the ITAA 1936]***

7.28 The amendment applies in relation to dividends paid on or after 28 June 2010 — that is, from the date of effect of subsection 44(1A). ***[Schedule 7, item 10]***

7.29 In this regard, the amendment is beneficial to taxpayers and allows corporate limited partnerships to effectively return capital to partners.

Incorrect Cross-Reference to International Agreements Act

7.30 Subsection 160ZZVB(2) of the ITAA 1936 relates to the application of provisions regarding Australian branches of offshore banks.

7.31 The provision provides that, where a bank is subject to an international agreement, they may elect that the Part (Part IIIB of the ITAA 1936) does not apply.

7.32 In incorporating the defined term 'agreement', the provision refers to the *Income Tax (International Agreements) Act 1953,* which has been renamed the *International Tax Agreements Act 1953*.

7.33 The amendment corrects the reference. ***[Schedule 7, item 11, subsection 160ZZVB(2) of the ITAA 1936]***

Updates to the list of tax offsets

7.34 Section 13-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) is a guide that lists a number of tax offsets. The Government has identified a number of tax offsets that are not included in the list. These amendments add two new offsets to the list. ***[Schedule 7, items 13 and 14, section 13-1 of the ITAA 1997]***

Clarification of the description of certain capital gains tax roll-over restrictions in guide material (TIES reference number 005/2011)

7.35 In order to assist taxpayers in understanding the operation of the tax law, where a provision refers to another part of the tax law, it will generally include a brief description of this provision to which it refers. This description has no operative effect — it is included solely to assist taxpayers.

7.36 This amendment corrects a case where this brief description was potentially misleading as it did not sufficiently cover the operation of the section that was being referenced. While this flawed description does not affect the operation of the law, it did have the potential to confuse taxpayers.

7.37 Specifically, section 40-340 of the ITAA 1997 provides for a roll-over on disposal of a depreciating asset in circumstances in which the capital gains tax (CGT) provisions would provide a roll-over. See for example, item 1 of the table in subsection 40-340(1), which provides a roll-over on disposal of an asset to a wholly-owned company if that disposal would have attracted a CGT roll-over under Subdivision 122-A of the ITAA 1997. The intention of this provision is generally to provide the same relief under the depreciation regime as would be available for an equivalent asset in relation to CGT.

7.38 Subsection 40-340(2) of the ITAA 1997 instructs the taxpayer to disregard some provisions in deciding if a CGT roll-over would have been available for the purposes of the roll-over for depreciating assets, allowing roll-overs for depreciating assets in circumstances where they would not be available for the purposes of CGT. This prevents CGT-specific requirements from excluding relief under the depreciating asset regime.

7.39 Paragraph 40-340(2)(b) of the ITAA 1997 instructs you to disregard subsection 122-25(3), which effectively excludes roll-over relief for ‘precluded assets’, which includes, for example, depreciating assets. Consistent with the general rule of providing a description where a section is referenced, paragraph 40-340(2)(b) of the ITAA 1997 describes subsection 122-25(3) as excluding certain assets from roll-over relief under Division 122-A. While not inaccurate, the present wording of this description is slightly misleading as ‘precluded assets’ under subsection 122-25(3) are also excluded from accessing a number of other CGT roll-overs beyond just those in Division 122-A. As a result, a taxpayer on reading paragraph 40-340(2)(b) could receive an incorrect impression about the scope of the CGT rollovers that ‘precluded assets’ cannot access.

7.40 These amendments revise the description of subsection 122-25(3) in paragraph 40-340(2)(b) to make clear that subsection 122-25(3) excludes a wider range of assets from rollover relief. ***[Schedule 7, item 15, paragraph 40-340(2)(b) of the ITAA 1997]***

7.41 This clarification eliminates the potential for taxpayers to be confused or misled about the CGT treatment of 'precluded assets' by the guidance material in paragraph 40-340(2)(b). It has no impact on the substantive tax law.

Deductions for amounts contributed to superannuation funds

7.42 An amendment is made to correct the section reference in item 2B in the table that sets out other deductions for superannuation funds to subsection 295-490(1) of the ITAA 1997.

7.43 Item 2B relates to situations where a taxpayer gives a deduction notice to a successor fund in respect of a contribution to their original fund, and then gives a variation notice to vary their concessional contributions. It may also apply to a mandatory transfer of members under a MySuper transfer.

7.44 Prior to the amendment, the successor fund was only entitled to the deduction if the fund included the contribution as assessable income under item 2A in the table to subsection 295-490(1). A successor fund would never be able to satisfy this requirement because item 2A only applies when a deduction notice is given to the original fund, not the successor fund.

7.45 The intention was for the deduction in item 2B to be available where the superannuation fund included the contribution in assessable income at the time they received the deduction notice. This ensures that the successor fund is compensated for including in assessable income, an additional amount that would not have been included if the fund member had initially contributed the correct amount and did not issue a variation notice.

7.46 Accordingly, this amendment corrects the section reference so that the deduction for superannuation funds in item 2B operates in the way intended. ***[Schedule 7, item 17, item 2B in the table to subsection 295-490(1) of the ITAA 1997]***

Example 7.1: Deduction where superannuation contribution reduced

ABC Superannuation Fund (ABC) is a complying superannuation fund. ABC receives $150,000 as a rollover superannuation benefit. The amount forms part of a successor fund transfer from another superannuation fund (Exsuper) and represents contributions made to

the other fund in that income year by Sebastien who is a member of Exsuper. As the payment of the rollover benefit to ABC is for the benefit of Sebastien, it is treated as being made to Sebastien for the purposes of section 307-15.

Subsequent to the transfer to ABC, but before ABC has lodged its income tax return for the income year in which the transfer was made, Sebastien provides ABC with a notice under section 290-170 of his intention to claim a deduction in relation to $25,000 of the contribution. ABC acknowledges receipt of the notice from Sebastien.

In accordance with item 2A of the table in subsection 295-190(1), ABC includes the $25,000 rollover superannuation benefit it received in relation to Sebastien, which was covered by the section 290-170 notice, in its assessable income for the income year.

In February of the following income year, after ABC has lodged its income tax return for the income year in which the transfer was made, Sebastien provides ABC with a further notice, for the purposes of section 290-180. The notice advises of his intention to reduce the deduction claim previously notified in the earlier section 290-170 notice to nil.

Under item 2B of the table in subsection 295-490(1), ABC is entitled to a deduction of $25,000 in the income year the second notice is received (unless ABC chooses the alternative option provided by subsection 295-197(4)). The deduction offsets the amount included in ABC's assessable income for the income year in which the transfer was made to reflect that Sebastien has notified ABC that no amount of superannuation contributions will now be deducted. The amendment applies to notices given to a superannuation fund to deduct a personal contribution under section 290-170 of the ITAA 1997 on or after the day following Royal Assent. ***[Schedule 7, item 18, paragraph (a)]***

7.48 It also applies to notices of variation given under section 290-180 of the ITAA 1997 after the day of Royal Assent. This is irrespective of whether the notice being varied was given before, on or after the day of Royal Assent. ***[Schedule 7, item 18, paragraph (b)]***

Consequential amendments to delegation provisions for designated infrastructure projects

7.49 Division 415 of the ITAA 1997 sets out special rules for the tax treatment of the losses and bad debts of 'designated infrastructure projects'.

7.50 Under Division 415, the Infrastructure CEO (formerly the Infrastructure Co-ordinator) may exercise a number of powers and

functions, including designating projects as designated infrastructure projects.

7.51 Section 415-95 allows the Infrastructure CEO to delegate any of the office's powers or functions under Subdivision 415-C (designating infrastructure projects) to a Senior Executive Service (SES) (or acting SES) employee of Infrastructure Australia who is a member of the staff assisting the Infrastructure CEO under section 39 of the *Infrastructure Australia Act 2008*.

7.52 Following amendments made by the *Infrastructure Australia Amendment Act 2014*, there will no longer be staff to whom this provision can apply.

7.53 These amendments revise section 415-95 to allow the delegation of powers or functions by the Infrastructure CEO under Subdivision 415-C to SES and acting SES staff engaged by or seconded to Infrastructure Australia. ***[Schedule 7, item 19, section 415-95 of the ITAA 1997]***

7.54 This will preserve the current scope for delegation under the new employment arrangement for the staff of the Infrastructure CEO established by the *Infrastructure Australia Amendment Act 2014*.

Acquisition cost of Australian Carbon Credit Units

7.55 Prior to the amendments, there was no mechanism for determining the acquisition cost of Australian carbon credit units (ACCUs) purchased on the Registry. These units do not fall within the scope of subsections 420-60(3) of the ITAA 1997 as they are not issued under the Carbon Farming Initiative. Before the amendments, these units did not fall under subsection 420-60(4) of the ITAA 1997 as the subsection did not apply to any ACCUs.

7.56 A method for determining the acquisition cost for all registered emission units is needed as units are accounted for using the rolling balance method. This method involves taxpayers subtracting the acquisition cost of a registered emissions unit from its value at year end, and bringing the difference to account as assessable income or a deduction at the end of the first income year that they held the units.

7.57 This amendment provides for the acquisition cost of ACCUs purchased on the Registry to be calculated in the same way as other registered emission units.

7.58 Accordingly, the acquisition cost of an ACCU purchased on the registry is determined by totalling the expenditure incurred in becoming the holder of the unit, such as the price paid for the unit, brokerage fees

and other transaction costs. Expenditure cannot be included in the acquisition cost if it is not deductible under section 420-15 of the ITAA 1997. ***[Schedule 7, item 20, subsection 420-60(4) of the ITAA 1997]***

7.59 The amendment applies in relation to income years starting on or after the day following Royal Assent. ***[Schedule 7, item 21]***

7.60 The Schedule also repeals the transitional rules for determining the acquisition cost for units acquired prior to the commencement of Division 420 of the ITAA 1997. These transitional rules are redundant as there are no new transactions that fall within the scope of the rules and the *Acts Interpretation Act 1901* protects previous transactions that relied on the rules. ***[Schedule 7, item 22, Subdivision 420-B of the Income Tax (Transitional Provisions) Act 1997]***

7.61 The repeal of the transitional rules applies on or after the day following Royal Assent.

Conditions in the Petroleum Resource Rent Tax Assessment Act 1987 for transferring expenditure from loss companies to profit companies

7.62 Loss companies may transfer expenditure on a project to a profit company if they satisfy the conditions in clause 31 of Schedule 1 to the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA). One of these conditions applies when the expenditure is indirectly incurred through another entity. This condition refers to the section in the PRRTAA that sets out the rules for determining which company made the payment.

7.63 The *Tax Laws Amendment (2013 Measures No. 2) Act 2013* amended the rules for determining which company made a payment and changed the section numbers. However, it did not make a consequential amendment to change the reference in the condition in clause 31.

7.64 Accordingly, this item amends the condition so that it refers to the correct paragraph in the PRRTAA. ***[Schedule 7, item 23, subparagraph 31(1)(b)(ii) of Schedule 1 to the PRRTAA]***

7.65 The amendment applies retrospectively so that it operates to allow transfer of expenditure to profit companies from the same time as the amendments in the *Tax Laws Amendment (2013 Measures No. 2) Act 2013*. It has no adverse effect on companies as it simply corrects a reference and ensures that the amendments apply as intended to allow the transfer of expenditure. ***[Schedule 7, item 24]***

General administration of provisions in the Retirement Savings Accounts Act 1997

7.66 Section 3 of the *Retirement Savings Accounts Act 1997* provides for the general administration of the Act.

7.67 Subparagraph 3(1)(e)(ii) states that the Commissioner has the general administration of subsection 144(1A). The Act does not have this subsection. The subparagraph should refer to subsection 144(2A).

7.68 This amendment corrects the reference. ***[Schedule 7, item 25, subparagraph 3(1)(e)(ii) of the Retirement Savings Accounts Act 1997]***

Repeal of spent provisions

7.69 Subsection 32C(4A) of the *Superannuation Guarantee (Administration) Act 1992* provides that employer contributions to the Public Sector Superannuation Accumulation Plan (PSSAP) comply with the choice of fund requirements. This provision was required between 1 July 2005 and 1 July 2006 when the PSSAP was a part of the Public Sector Superannuation Scheme, a defined benefit fund not subject to the choice requirements.

7.70 The subsection ceased to have effect from 1 July 2006 when the PSSAP was established as a separate superannuation scheme and became subject to the broader choice of fund requirements.

7.71 This amendment repeals the subsection. ***[Schedule 7, item 28, subsection 32C(4A) of the Superannuation Guarantee (Administration) Act 1992]***

7.72 The *Superannuation Act 2005* and the *Superannuation (Productivity Benefit) Act 1988* also contain cross-references to the subsection. This amendment also removes those cross-references. ***[Schedule 7, items 26, 27 and 32, paragraph 18(3)(d) and subparagraph 14(4)(a)(iv) of the Superannuation Act 2005 and subparagraph 3AB(1)(b)(iii) of the Superannuation (Productivity Benefit) Act 1988]***

Definition of business real property in the Superannuation Industry (Supervision) Act 1993

7.73 This amendment re-inserts a reference to the definition of ‘business real property’ in paragraph 71(1)(g) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

7.74 The *Superannuation Industry (Supervision) Amendment Act 2010* (SISAA) removed the reference to the definition of ‘business real property’ contained in subsection 66(5). The explanatory memorandum did not explain the reason for the removal and simply noted that the amendment was consequential to the amendments made by the SISAA.

7.75 The removal may have created uncertainty as to the meaning of 'business real property' for the purposes of paragraph 71(1)(g) of the SIS Act.

7.76 For this reason, this amendment re-inserts the reference in paragraph 71(1)(g) to the definition of 'business real property', as defined in subsection 66(5), effective from when the reference was removed by the SISAA. ***[Schedule 7, items 29 and 30, paragraph 71(1)(g) of the SIS Act]***

Definition of 'assessable amount' in the Taxation Administration Act 1953

7.77 This amendment inserts a definition of 'assessable amount' into the TAA 1953. The term 'assessable amount' is used in subsections 14ZY(1B) and 14ZW(1AAC) of the TAA 1953, but it has not been included in the definition section.

7.78 The definition provides that the term has the meaning given by subsection 155-5(2) of Schedule 1 to the TAA 1953. ***[Schedule 7, item 33, subsection 2(1) of the TAA 1953]***

Commissioner's reporting obligations in section 3B of the Taxation Administration Act 1953

7.79 Section 3B of the TAA 1953 requires the Commissioner to prepare an annual report and provide it to the Minister.

7.80 Prior to the amendments, the Commissioner was required to include details about foreign currency transfers that breached subsection 14C(2) of the TAA 1953 in the annual report. However, section 14C of the TAA 1953 ceased to have effect on and from 18 September 2009. Accordingly the Commissioner's obligation to report on breaches of subsection 14C(2) is repealed as it is redundant. ***[Schedule 7, item 34, paragraph 3B(1AA)(a) of the TAA 1953]***

7.81 The amendments to the Commissioner's reporting obligations have effect from the day following Royal Assent.

Repeal redundant definitions from the Taxation Administration Act 1953

7.82 Sections 14ZZK and 14ZZO of the TAA 1953 grant taxpayers the right to challenge an assessment on the basis that it is excessive or otherwise incorrect. Historically, the sections listed the assessments to which a taxpayer could object but the list of assessment was removed when the sections were rewritten in 2013.

7.83 There are now no substantive sections in the TAA 1953 that refer to a 'franking assessment'. Therefore, the definition of 'franking assessment' in the dictionary section in the TAA 1953 is repealed, as terms that are not used in the Act do not need to be defined. ***[Schedule 7, item 35, section 14ZQ of the TAA 1953]***

7.84 This amendment applies from the day following Royal Assent.

Definition of tax-related liability for Subdivision 284-B

7.85 This amendment clarifies that subsection 284-75(3) of the TAA 1953 does not apply to a tax-related liability arising under the Excise Acts (as defined in section 4 of the *Excise Act 1901*). This subsection imposes an administrative penalty where you fail to give a notice or document to the Commissioner, and that notice is necessary to determine a tax-related liability. A tax-related liability is defined as one that is imposed under a 'taxation law'. Ordinarily this includes the Excise Acts because the Commissioner has general power of administration of those Acts. However, throughout Subdivision 284-B, wherever 'taxation law' is mentioned, the Excise Acts are specifically excluded. To clarify that subsection 284-75(3) is consistent with the remainder of Subdivision 284-B, this amendment specifically excludes from the definition of 'tax-related liability', liabilities arising under the Excise Acts. ***[Schedule 7, item 38, paragraph 284-75(3)(b) of Schedule 1 to the TAA 1953]***

7.86 This amendment applies in relation to documents required to be given to the Commissioner on or after the day following Royal Assent. ***[Schedule 7, item 39]***

Disclosure of Protected Information to Public Officers of Companies and Trusts

7.87 It is a requirement that companies and certain trusts have an individual appointed as their 'public officer' (sections 252 and 252A of the ITAA 1936). The purpose of the public officer is to facilitate the administration of the tax laws. In this regard, a public officer is answerable for all things done by the company or the trust under the tax laws. Everything done in the capacity of public officer is deemed to be done by the company or trust.

7.88 Division 355 of Schedule 1 to the TAA 1953 regulates the disclosure, by taxation officers, of protected information collected from taxpayers under the tax laws. The law does not currently allow the disclosure of protected information to public officers.

7.89 Current administrative practice, therefore, relies on another exception, found in paragraph 355-25(2)(g), for disclosure to nominated

individuals. This requires the entity to nominate the public officer in an approved form to act on the entity's behalf. As public officers are able to complete the form and nominate themselves, the practice imposes unnecessary compliance costs.

7.90 This amendment allows taxation officers to disclose protected information about an entity to the entity's public officer, and allows public officers to on-disclose the information, regardless of whether the public officer is nominated under paragraph 355-25(2)(g). ***[Schedule 7, item 40, paragraph 355-25(2)(ba) of Schedule 1 to the TAA 1953]***

7.91 The amendment applies to records or disclosures made on or after the day following Royal Assent (whenever the information was acquired). ***[Schedule 7, item 41]***

Disclosure of Protected Information to Legal Practitioners

7.92 This amendment clarifies that taxation officers can make disclosures of taxpayer information to a legal practitioner representing an entity in relation to affairs under one or more tax laws, and not just the income tax laws. Ordinarily, taxation officers may make disclosures of taxpayer information to 'covered entities', which includes 'a legal practitioner representing the primary entity in relation to the primary entity's tax affairs'. 'Tax affairs' was defined as affairs relating to 'tax', and 'tax' was defined as income tax imposed by the ITAA 1936. This technically did not include legal practitioners if they represented an entity on a range of tax matters. ***[Schedule 7, item 40, paragraph 355-25(2)(b) of Schedule 1 to the TAA 1953]***

7.93 The amendment applies to records or disclosures made on or after the day following Royal Assent (whenever the information was acquired). ***[Schedule 7, item 41]***

Updating references to the Crime and Misconduct Commission of Queensland

7.94 Effective from 1 July 2014, Queensland's Crime and Misconduct Commission was renamed the Crime and Corruption Commission. Accordingly, an amendment is made to update a reference to the Commission in the secrecy provisions of the TAA 1953. ***[Schedule 7, item 42, section 355-70 of Schedule 1 to the TAA 1953]***

7.95 To remove doubt that the exemption from the secrecy provisions continues to apply to the renamed Commission, item 43 makes it clear that this amendment applies from 1 July 2014, to align with the change in name. ***[Schedule 7, item 43]***

Style, spelling, grammatical and typographical errors

7.96 The following amendments are made to correct minor style, spelling and typographical errors:

Table 7.1: Style, spelling, grammatical and typographical errors

Item(s)	***Provision(s) Affected***
Schedule 7, item 4	Paragraph 63-27(1)(b) of the GST Act
Schedule 7, item 12	Subsection 272-87(3) of Schedule 2F to the ITAA 1936
Schedule 7, item 16	Subsections 165-115AA(2) and (3) of Schedule 1 to the ITAA 1997
Schedule 7, item 31	Note 3 to section 253 of the SIS Act

Part 2: Other Amendments

7.97 Part 2 of Schedule 7 makes a number of corrections to previous amending Acts to ensure that the amendments made under the earlier Acts are effective.

7.98 The amendments in this Part to previous amending Acts commence immediately following the commencement of the provisions they amend. This retrospectivity is necessary to ensure the amending Acts operate as intended.

Classes of expenditure in the Petroleum Resource Rent Tax Assessment Act 1987

7.99 The PRRTAA sets out ten categories of deductible expenditure, including 'Class 2 augmented bond rate general expenditure' in section 34A and 'Class 1 GDP factor expenditure' in section 35. Each of the ten categories of expenditure in the PRRTAA was designed to be mutually exclusive.

7.100 'Class 2 augmented bond rate general expenditure' *excludes* expenditure incurred more than five years before the earlier of the day specified in the production licence notice and the day the production licence was issued.

7.101 Before this amendment, 'Class 1 GDP factor expenditure' *included* expenditure incurred more than five years before the production licence came into force.

7.102 Therefore, before this amendment, there was a potential for petroleum project expenditure to satisfy the definition of both 'Class 2 augmented bond rate general expenditure' and 'Class 1 GDP factor expenditure' if the day specified in the production licence notice was earlier than the day the licence was issued and came into force. For

example, project expenditure incurred on 1 May 2009 would have satisfied the definition of both classes of expenditure if the production licence was issued (and came into force) on 1 June 2014 but the day specified in the notice was 1 April 2014.

7.103 The unintended overlap between the two classes of expenditure arose when the relevant date for 'Class 2 augmented bond rate general expenditure' was amended by the *Petroleum Resource Rent Tax Assessment Amendment Act 2012*, but a consequential amendment was not made to amend the date for 'Class 1 GDP factor expenditure'.

7.104 This item amends the qualifying dates for 'Class 1 GDP factor expenditure' so that they are the same as the dates for 'Class 2 augmented bond rate general expenditure'. This removes the unintended overlap between the two classes of expenditure. ***[Schedule 7, item 44, paragraph 35(1)(a) of the PRRTAA]***

7.105 The amendment applies retrospectively from the day that the *Petroleum Resource Rent Tax Assessment Amendment Act 2012* commenced. It is a technical amendment to the definition of 'Class 1 GDP factor expenditure' and corrects a drafting error. The amendment does not alter the intention of the law or the way the section is administered. It is not expected that any taxpayers will be adversely affected by the retrospective operation of the amendment.

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012 — References to the Commissioner

7.106 Items 22, 23 and 46 of Schedule 4 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012* amended subsections 299TA(1) and 299TB(1) of the SIS Act, and subsection 143B(1) of the *Retirement Savings Accounts Act 1997* to insert the abbreviation 'Commissioner' for the Commissioner of Taxation.

7.107 This amendment ensures that the abbreviation is only inserted once in each subsection. ***[Schedule 7, items 45, 46 and 48, items 22, 23 and 46 of Schedule 4 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012]***

Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012 — Cross-referencing Error

7.108 Subitem 30(2) of Schedule 4 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012* referred to a regulation made for the purposes of subsection 45S(1) of the *Retirement Savings Accounts Act 1997*.

7.109 This amendment corrects the incorrect subsection reference to subsection 45R(1). ***[Schedule 7, item 47, subitem 30(2) of Schedule 4 to the Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012]***

Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

7.110 Sections 29QB and 29QC of the SIS Act were inserted by item 42 of Schedule 3 to the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*. Item 42 misdescribed where they were to be added: it provided for the sections to be added at the end of Division 6 of Part 2B, but that Division was repealed before the item was enacted.

7.111 This amendment corrects the error in the 2012 amending Act and provides that the provisions are to be located in a new Division 5 of Part 2B of the SIS Act. ***[Schedule 7, items 49 and 50, item 42 of Schedule 30 to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012]***

7.112 The misdescribed amendments contained regulation-making powers. These amendments therefore contain provisions to ensure the validity of regulations made in reliance on the amendments. ***[Schedule 7, item 51]***

Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013

7.113 Item 11 of Schedule 1 to the *Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013* was intended to include 'documentary' in the definition section at subsection 995-1(1) of the ITAA 1997. The entry for 'documentary' was to refer to the definition in section 376-25 of the ITAA 1997.

7.114 Prior to this miscellaneous amendment, item 11 did not take effect as the drafting direction ('insert') was omitted.

7.115 This amendment inserts the drafting direction into the amending Act so that item 11 takes effect. ***[Schedule 7, item 52, item 11 of Schedule 1 to the Tax and Superannuation Laws Amendment (2013 Measures No. 2) Act 2013]***

Tax Laws Amendment (2013 Measures No. 2) Act 2013

7.116 Schedule 2 to the *Tax Laws Amendment (2013 Measures No. 2) Act 2013* introduced a tax incentive for entities that carry on nationally significant designated infrastructure projects. The tax incentive (which is contained in Division 415 of the ITAA 1997):

- uplifts the value of carry forward tax losses by the long term bond rate; and
- exempts the losses from the continuity of ownership, same business, trust loss and bad debt deduction tests.

7.117 Item 34 of that Schedule made a minor consequential amendment to section 719-265 of the ITAA 1997 relating to the operation of the tax incentive for consolidated groups.

7.118 These miscellaneous amendments amend item 34 of Schedule 2 to the *Tax Laws Amendment (2013 Measures No. 2) Act 2013* to correct the location of commas. ***[Schedule 7, items 53 and 54, item 34 of Schedule 2 to the Tax Laws Amendment (2013 Measures No. 2) Act 2013]***

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014 — Miscellaneous Amendments

7.119 This Schedule 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

7.120 Schedule 7 to this Bill makes a number of miscellaneous amendments to the taxation and superannuation laws. These amendments are part of the Government’s commitment to the care and maintenance of the taxation and superannuation systems.

7.121 These amendments include style changes, the repeal of redundant provisions, the correction of anomalous outcomes and corrections to previous amending Acts.

Human rights implications

7.122 These amendments make a number of minor and machinery changes to the taxation and superannuation provisions to ensure the

provisions are consistent with their original policy intent. As such, this Schedule does not engage any of the applicable rights or freedoms.

Conclusion

7.123 This Schedule is compatible with human rights as it does not raise any human rights issues

Index

Schedule 1: Excess non-concessional superannuation contributions tax reforms

Bill reference	*Paragraph number*
Items 1 to 6, 9 to 14, 17, 19, 21 to 25, 27, 28, 30, 31, 34, 35, 37, 42 to 45 and 48	1.71
Item 7, sections 292-20, 292-25 and 292-30 of the ITAA 1997	1.40
Item 7, sections 292-20, 292-25, 292-30 and 292-85 of the ITAA 1997	1.41
Item 7, sections 292-20, 292-25, and 292-30 and item 8, section 292-85 of the ITAA 1997	1.55
Item 7, subsections 292-20, 292-25 and 292-30 of the ITAA 1997	1.65
Item 7, section 292-20 and subsection 292-25(1) of the ITAA 1997	1.39
Item 7, sections 292-25 and 292-30 of the ITAA 1997	1.48
Item 8, section 292-85 of the ITAA 1997	1.34, 1.36
Item 15, section 292-467 and item 8, section 292-85 of the ITAA 1997	1.63
Item 16, section 303-17 and item 7, sections 292-20 and 292-25 of the ITAA 1997	1.60
Item 18, section 14ZVC of the TAA 1953	1.68
Item 26, subsection 96-7(1) of Schedule 1 to the TAA 1953	1.24
Item 26, subsection 96-7(1) and item 44, subsection 97-25(1) of Schedule 1 to the TAA 1953	1.38
Item 26, paragraph 96-7(1)(b) of Schedule 1 to the TAA 1953	1.30
Item 26, paragraph 96-7(1)(c) of Schedule 1 to the TAA 1953, item 8, section 292-85 of the ITAA 1997	1.33
Item 26, subsection 96-7(5) of Schedule 1 to the TAA 1953	1.25
Item 26, subsections 96-7(5) and (8) of Schedule 1 to the TAA 1953	1.28
Item 26, subsection 96-7(4) of Schedule 1 to the TAA 1953	1.29
Item 26, subsections 96-7(6) and (7) of Schedule 1 to the TAA 1953	1.35
Item 29, section 96-12 of Schedule 1 to the TAA 1953	1.49
Item 32, subsection 96-20(1A) of Schedule 1 to the TAA 1953	1.26, 1.51
Item 33, subsection 96-20(3) of Schedule 1 to the TAA 1953	1.53
Item 36, subsections 96-25(2) and (3) of Schedule 1 to the TAA 1953	1.54

Bill reference	***Paragraph number***
Items 38, 39 and 40, section 96-35 of Schedule 1 to the TAA 1953	1.56
Item 41, section 96-40, item 26, subsections 96-7(6) and 96-7(7) of Schedule 1 the TAA 1953	1.58
Item 41, section 96-42 of Schedule 1 to the TAA 1953 and item 46, subsection 286-75(2) of Schedule 1 to the TAA 1953	1.57
Item 44, section 97-25 of Schedule 1 to the TAA 1953	1.23
Item 44, paragraph 97-25(1)(b) of Schedule 1 to the TAA 1953	1.37
Item 44, subsection 97-30(1) of Schedule 1 to the TAA 1953	1.42, 1.47
Item 44, subsection 97-30(2) of Schedule 1 to the TAA 1953	1.46
Item 44, section 97-35 of Schedule 1 to the TAA 1953, item 15, subsection 292-467(4) of the ITAA 1997	1.67
Item 47, section 288-90 of Schedule 1 to the TAA 1953	1.72
Item 49	1.73

Schedule 2: Transferring tax investigation function to Inspector-General of Taxation

Bill reference	***Paragraph number***
Item 1	2.31
Items 1 and 3	2.32
Items 1, 2, 6, 7, and 9	2.34
Items 2, 4, 6, 7, 9, 12, 13, 14 and 18	2.33
Items 4, 8 and 10	2.35
Items 5, 7 and 17	2.23
Items 6 and 15, sections 4, 37B and 37Ct	2.71
Item 11	2.21
Item 11, table items 1 to 5 of section 15	2.56
Item 11, table items 1 to 14 in section 15 and section 16	2.50
Item 11, table items 1 and 13 in section 15	2.51
Item 11, table item 2 in section 15	2.52
Item 11, table item 4 in section 15 and section 16	2.53
Item 11, section 7	2.24
Item 11, subsection 7(1), sections 15 and 18	2.30
Item 11, paragraphs 7(1)(c) and (d)	2.25
Item 11, paragraph 7(1)(a)	2.26
Item 11, paragraph 7(1)(b)	2.27

Bill reference	***Paragraph number***
Item 11, paragraph 7(1)(e) and section 10 of the IGT Act and item 35, paragraph 6D(4)(b) and subsection 6D(6) of the Ombudsman Act	2.28
Item 11, subsection 7(2) of the IGT Act	2.29
Item 11, subsection 8(1)	2.36
Item 11, subsection 8(2)	2.37
Item 11, subsection 8(3)	2.38
Item 11, section 9	2.39
Item 11, paragraph 10(1)(a) and subsection 10(5)	2.40
Item 11, paragraph 10(1)(b)	2.41
Item 11, subsection 10(2)	2.43
Item 11, subsections 10(3) and (4)	2.45
Item 11, section 15	2.47
Item 11, paragraphs 15(a) to (j)	2.49
Item 11, paragraph 15(c)	2.54
Item 11, paragraph 15(d)	2.55
Item 11, subsection 17(4) and paragraph 15(j)	2.57
Item 11, section 15 and subsections 16(3) and 17(2)	2.61
Item 11, paragraph 15(j)	2.58
Item 11, section 15 and subsection 17(1)	2.60
Item 11, section 15, subsection 17(3) and section 18	2.63
Item 11, section 18	2.66
Items 16 and 19 to 25	2.64
Items 26 to 28	2.67
Item 29, section 42	2.68
Item 30, subsection 43(2)	2.69
Items 31 and 32	2.70
Items 33 to 35	2.75
Item 35	2.76
Item 35, paragraph 6D(2)(c) of the Ombudsman Act	2.77
Items 36 and 39 to 43	2.73
Items 37 and 38	2.74
Item 44	2.78
Item 45	2.79
Item 46	2.80

Schedule 3: CGT exemption for compensation and insurance

Bill reference	*Paragraph number*
Clause 4	3.28
Items 1 and 2, paragraphs 104-71(1)(da) and (db)	3.23
Item 3, paragraph 118-37(1)(a)	3.24
Item 3, paragraph 118-37(1)(b)	3.8
Item 3, paragraph 118-37(1)(ba)	3.9
Item 4, table item 3 in subsection 118-300(1)	3.10
Item 5, table item 7 in subsection 118-300(1)	3.13, 3.17
Item 6, subsection 118-300(1A)	3.12
Item 7, table item 10 in subsection 295-85(4)	3.19
Item 8	3.25

Schedule 4: Providing certainty for superannuation fund mergers

Bill reference	*Paragraph number*
Items 1 and 5	4.21
Item 2	4.29
Item 3	4.25
Item 4	4.26, 4.27
Item 8	4.32
Item 9	4.33
Items 11 to 14 and 16	4.24
Items 14 and 15	4.23
Item 17	4.22

Schedule 5: Disclosing tax information relating to proceeds of crime orders

Bill reference	*Paragraph number*
Items 1 and 2, subsection 355-70(1) of Schedule 1 to the TAA 1953	5.9
Item 3, subsection 355-70(5) of Schedule 1 to the TAA 1953	5.12

Schedule 6: Exploration development incentive

Bill reference	*Paragraph number*
Item 1, item 27 in the table in section 67-23 of the ITAA 1997	6.28
Item 2, section 418-10 of the ITAA 1997	6.24
Item 2, paragraph 418-10(b) of the ITAA 1997	6.25
Item 2, subparagraph 418-10(1)(b)(ii) and section 418-30 of the ITAA 1997)	6.54
Item 2, section 418-15 of the ITAA 1997	6.31
Item 2, paragraph 418-15(1)(d) and subsection 418-15(2) of the ITAA 1997	6.34
Item 2, section 418-20 of the ITAA 1997	6.35
Item 2, subsections 418-20(1) and (4) of the ITAA 1997	6.37
Item 2, section 418-25 of the ITAA 1997	6.27
Item 2, sections 418-25 and 418-30 of the ITAA 1997	6.40
Item 2, subsection 418-20(2) of the ITAA 1997	6.41, 6.46
Item 2, subsection 418-20(3) of the ITAA 1997	6.48
Item 2, subsection 418-20(5) of the ITAA 1997	6.52
Item 2, section 418-50 of the ITAA 1997	6.62
Item 2, section 418-55 of the ITAA 1997	6.63
Item 2, section 418-70 of the ITAA 1997	6.67
Item 2, subsection 418-70(5) of the ITAA 1997	6.126
Item 2, section 418-75 of the ITAA 1997	6.70
Item 2, paragraph 418-75(1)(a) of the ITAA 1997	6.77
Item 2, paragraphs 418-75(1)(b) and (c) of the ITAA 1997	6.74
Item 2, subsection 418-75(2) of the ITAA 1997	6.96, 6.98
Item 2, paragraph 418-80(1)(a) of the ITAA 1997	6.87
Item 2, paragraph418-80(1)(b) of the ITAA 1997	6.82
Item 2, subsection 418-80(3) of the ITAA 1997	6.89
Item 2, subsection 418-80(4) of the ITAA 1997	6.93
Item 2, subsection 418-80(5) of the ITAA 1997	6.95
Item 2, subsections 418-85(1) and (2) of the ITAA 1997	6.106
Item 2, subsections 418-85(3), (4)and (5) of the ITAA 1997	6.112
Item 2, subsections 418-85(3) and (4) of the ITAA 1997	6.113
Item 2, section 418-95 of the ITAA 1997	6.105, 6.116
Item 2, step 3 in the method statement in subsection 418-85(2) and section 418-90 of the ITAA 1997	6.119

Item 2, subsection 418-90(5) of the ITAA 1997	6.125
Item 2, subsection 418-90(6) of the ITAA 1997	6.124
Item 2, section 418-110 of the ITAA 1997	6.128
Item 2, section 418-115 and paragraph 418-120(1)(a) of the ITAA 1997	6.135
Item 2, section 418-120 of the ITAA 1997	6.129
Item 2, section 418-125 of the ITAA 1997	6.137
Item 2, section 418-130 of the ITAA 1997	6.136, 6.138
Item 2, subsection 418-85(6) and section 418-150 of the ITAA 1997, and the Excess Exploration Credit Tax Bill 2014	6.141
Item 2, section 418-160 of the ITAA 1997	6.143
Items 2 and 33, sections 418-165 and 418-170 of the ITAA 1997 and section 280-101 in Schedule 1 to the TAA 1953	6.145
Item 2, section 418-175 of the ITAA 1997	6.146
Item 2, subsection 418-75(2) and section 418-185 of the ITAA 1997	6.151
Item 2, section 418-180 of the ITAA 1997	6.147
Item 2, subsection 418-185(3) of the ITAA 1997	6.154
Items 2, 16 to20, 22, 24 to 27, 28, 33 and 35 to 36, sections 418-1 and 13-1, item 1 in the table at the end of section 36-25, section 197-42, item 7 in the table in subsection 205-105(1), item 8 in the table in subsection 219-15(2), the definitions of 'annual investment report', 'excess exploration credit tax', 'exploration credit', 'greenfields minerals expenditure', 'greenfields minerals explorer', 'maximum exploration credit amount' and 'tax loss' in subsection 995-1(1) of the ITAA 1997, item 16A in the table in subsection 8AAB(4) of the TAA 1953 and the method statements in sections 45-340 and 45-375, item 38D in the table in subsection 250-10(2), paragraph 280-105(1)(a) and subsections 280-110(1) and 284-80(1) in Schedule 1 to the TAA 1953	6.155
Items 3 to 15, definitions of 'exploration credit' and 'exploration development tax offset' in subsection 6(1), paragraphs 177C(1)(bba), 177C(1)(fa) and 177C(2A)(c), subsection 177C(3) and paragraphs 177C(3)(cb) and (h), 177CB(1)(da), 177F(1)(d), 177F(1)(e) and 177F(3)(d) to (f) of the ITAA 36	6.30
Items 21 and 23, subparagraphs 418-80(2)(b)(ii) and (iii) and the definition of 'annual investment income report' in subsection 995-1(1)	6.159
Items 27 to 30, paragraph (h) at the end of step 1 of the method statement in section 45-340 and paragraph (g) at the end of step 1 of the method statement in section 45-375 of the ITAA 1997	6.29
Items 30 and 31, paragraph 155-5(2)(g) and item 4 in the table in subsection 155-15(1) in Schedule 1 to the TAA 1953	6.142, 6.144
Item 36, item 5 in the table in subsection 284-80(1) in Schedule 1 to	6.150

the TAA 1953	
Items 38 to 72	6.157
Item 73	6.156
Items 74 to 79	6.158

Schedule 6 Imposition Bill — Excess Exploration Credit Tax Bill 2014

Bill reference	*Paragraph number*
Excess Exploration Credit Tax Bill 2014	***6.141***

Need to ask LDP Lead to itemise the EECT Bill above as this looks like it has not been done correctly

Schedule 7: Miscellaneous amendments

Bill reference	*Paragraph number*
Item 1, section 17-15 of the GST Act	7.8
Item 2, subsection 31-15(3) of the GST Act	7.9
Item 3	7.10
Item 5, section 93-15 of the GST Act	7.13
Item 6	7.14
Item 7, section 5 of the Excise Act 1901	7.20
Item 8, subsection 116(2) of the Excise Act 1901	7.22
Item 9, section 94L of the ITAA 1936	7.27
Item 10	7.28
Item 11, subsection 160ZZVB(2) of the ITAA 1936	7.33
Items 13 and 14, section 13-1 of the ITAA 1997	7.34
Item 15, paragraph 40-340(2)(b) of the ITAA 1997	7.40
Item 17, item 2B in the table to subsection 295-490(1) of the ITAA 1997	7.44
Item 18, paragraph (a)	7.45
Item 18, paragraph (b)	7.46
Item 19, section 415-95 of the ITAA 1997	7.51

Bill reference	***Paragraph number***
Item 20, subsection 420-60(4) of the ITAA 1997	7.56
Item 21	7.57
Item 22, Subdivision 420-B of the *Income Tax (Transitional Provisions) Act 1997*	7.58
Item 23, subparagraph 31(1)(b)(ii) of Schedule 1 to the PRRTAA	7.62
Item 24	7.63
Item 25, subparagraph 3(1)(e)(ii) of the *Retirement Savings Accounts Act 1997*	7.66
Items 26, 27 and 32, paragraph 18(3)(d) and subparagraph 14(4)(a)(iv) of the *Superannuation Act 2005* and subparagraph 3AB(1)(b)(iii) of the *Superannuation (Productivity Benefit) Act 1988*	7.70
Item 28, subsection 32C(4A) of the Superannuation Guarantee (Administration) Act 1992	7.69
Items 29 and 30, paragraph 71(1)(g) of the SIS Act	7.74
Item 33, subsection 2(1) of the TAA 1953	7.76
Item 34, paragraph 3B(1AA)(a) of the TAA 1953	7.78
Item 35, section 14ZQ of the TAA 1953	7.81
Item 36, paragraph 14ZW(1AAC)(b) of the TAA 1953	7.17
Item 37	7.18
Item 38, paragraph 284-75(3)(b) of Schedule 1 to the TAA 1953	7.83
Item 39	7.84
Item 40, paragraph 355-25(2)(b) of Schedule 1 to the TAA 1953	7.90
Item 40, paragraph 355-25(2)(ba) of Schedule 1 to the TAA 1953	7.88
Item 41	7.89, 7.91
Item 42, section 355-70 of Schedule 1 to the TAA 1953	7.92
Item 43	7.93
Item 44, paragraph 35(1)(a) of the PRRTAA	7.102
Items 45, 46 and 48, items 22, 23 and 46 of Schedule 4 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012*	7.105
Item 47, subitem 30(2) of Schedule 4 to the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012*	7.107
Items 49 and 50, item 42 of Schedule 30 to the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*	7.109
Item 51	7.110
Item 52, item 11 of Schedule 1 to the *Tax and Superannuation Laws*	7.113

Bill reference	**Paragraph number**
Amendment (2013 Measures No. 2) Act 2013	
Items 53 and 54, item 34 of Schedule 2 to the *Tax Laws Amendment (2013 Measures No. 2) Act 2013*	7.116