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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (NORTH QUEENSLAND FLOOD
RECOVERY) BILL 2019

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Assistant Treasurer, the Hon Stuart Robert MP)

Glossary

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

<i>Abbreviation</i>	<i>Definition</i>
ADI	Authorised deposit-taking institution
Agency	Northern Queensland Livestock Industry Recovery Agency
Bill	Treasury Laws Amendment (North Queensland Flood Recovery) Bill 2019
Determination	Disaster Recovery Funding Arrangements 2018
FRRR	Foundation for Rural and Regional Renewal
ITAA 1997	<i>Income Tax Assessment Act 1997</i>

General outline and financial impact

Income tax exemption for flood assistance support

Schedule 1 to the Bill amends the ITAA 1997 to make grants non-assessable non-exempt income if they:

- are Category C or D measure disaster recovery grants paid to small businesses, primary producers or non-profit organisations; and
- relate to flooding that commenced in Australia in the period between 25 January 2019 and 28 February 2019 (inclusive).

As a result, Category C and D measure grants to small businesses, primary producers and non-profit organisations affected by floods in North Queensland in late January 2019 and that continued into February 2019 are non-assessable non-exempt income.

Schedule 1 to the Bill also amends the ITAA 1997 to make grants to primary producers non-assessable non-exempt income if the grants are for repairing or replacing farm infrastructure, restocking or replanting, and they are provided for the purposes of an agreement between the Commonwealth and a State or Territory to assist primary producers affected by the flooding.

As a result, such grants to primary producers in North Queensland affected by floods in late January 2019 that continued into February 2019 are non-assessable non-exempt income.

Date of effect: The amendments apply to the 2018-19 income year and later income years for qualifying grants.

Proposal announced: This Schedule implements the measure ‘North Queensland Flood Recovery Package – tax treatment of qualifying grants’ from the 2019-20 Budget.

Financial impact: As at the 2019-20 Budget, the measure is estimated to have no revenue impact over the forward estimates period.

Human rights implications: This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.1 to 4.7.

Compliance cost impact: Nil.

Income tax exemption for storm assistance payments

Schedule 2 to the Bill amends the ITAA 1997 to exempt from income tax certain payments to primary producers that relate to storm damage sustained on or around 25 October 2018.

Payments may be made by the Foundation for Rural and Regional Renewal under grants totalling \$1 million from the Commonwealth to support primary producers in the Fassifern Valley, Queensland, affected by the storm.

Date of effect: The amendments apply to the 2018-19 income year and later income years.

Proposal announced: This Schedule implements the measure ‘Queensland storms – tax treatment of payments to primary producers’ from the 2019-20 Budget.

Financial impact: As at the 2019-20 Budget, the measure is estimated to have no revenue impact over the forward estimates period.

Human rights implications: This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.8 to 4.12.

Compliance cost impact: Nil.

Loan scheme for eligible primary producers affected by floods in Northern Queensland

Schedule 3 to the Bill implements a loan scheme to provide urgent assistance for eligible primary producers affected by floods in Northern Queensland.

Date of effect: Schedule 3 to the Bill commences the day after the bill receives the Royal Assent.

Proposal announced: The loan scheme was announced by the Prime Minister on 1 March 2019.

Financial impact: The Commonwealth will make available up to a total of \$1.75 billion in loans to participating ADIs. The estimated impact on the underlying cash balance between 2019-20 and 2022-23 is \$0.7 million.

Human rights implications: This Schedule does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 4, paragraphs 4.13 to 4.16.

Compliance cost impact: Minor.

Chapter 1

Income tax exemption for flood assistance support

Outline of chapter

- 1.1 Schedule 1 to the Bill amends the ITAA 1997 to make grants non-assessable non-exempt income if they:
- are Category C or D measure disaster recovery grants paid to small businesses, primary producers or non-profit organisations; and
 - relate to flooding that commenced in Australia in the period between 25 January 2019 and 28 February 2019 (inclusive).
- 1.2 As a result, Category C and D measure grants to small businesses, primary producers and non-profit organisations affected by floods in North Queensland in late January 2019 and that continued into February 2019 are non-assessable non-exempt income.
- 1.3 Schedule 1 to the Bill also amends the ITAA 1997 to make grants to primary producers non-assessable non-exempt income if the grants are for repairing or replacing farm infrastructure, restocking or replanting, and they are provided for the purposes of an agreement between the Commonwealth and a State or Territory to assist primary producers affected by the flooding.
- 1.4 As a result, such grants to primary producers in North Queensland affected by floods in late January 2019 that continued into February 2019 are non-assessable non-exempt income.
- 1.5 All references are to the ITAA 1997 unless otherwise stated.

Context of amendments

- 1.6 North Queensland experienced widespread and severe extended flooding from a monsoonal trough in late January 2019 that continued into February 2019 that caused large scale destruction and severe damage to property in the region.

1.7 The Australian and Queensland Governments have announced the payment of Category C and D measure disaster recovery grants to eligible small businesses, primary producers and non-profit organisations affected by flooding in North Queensland in late January 2019 that continued into February 2019.

1.8 The Australian and Queensland Governments will also provide additional grants to eligible primary producers affected by the floods. These additional grants will assist with the repair and replacement of farm infrastructure, and restocking and replanting.

Detailed explanation of new law

1.9 Schedule 1 to the Bill amends the ITAA 1997 to make the following two kinds of grants non-assessable non-exempt income:

- recovery grants; and
- restocking, replanting and farm infrastructure grants.

Recovery grants

1.10 Small businesses, primary producers and non-profit organisations affected by the North Queensland monsoonal trough flooding may be eligible for Category C and D measure disaster recovery grants under the Disaster Recovery Funding Arrangements 2018 (the Determination).

1.11 Schedule 1 to the Bill makes these grants non-assessable non-exempt income. This Determination is an administrative determination made by the Minister for Law Enforcement and Cyber Security on 5 June 2018 that applies to disasters that occur on or after 1 November 2018.

1.12 Grants are non-assessable non-exempt income if they:

- are, for the purposes of the Determination, Category C or D measure disaster recovery grants paid to small businesses, primary producers or non-profit organisations; and
- relate to flooding that commenced in Australia in the period between 25 January 2019 and 28 February 2019 (inclusive).

[Schedule 1, item 2, section 59-85]

1.13 Making these grants non-assessable non-exempt income ensures the grants are not subject to income tax. The amendments also ensure the grants do not reduce the amount of a taxpayer's tax losses from prior income years that can be carried forward and applied to reduce their taxable income in future years.

1.14 The terms small business, primary producer and non-profit organisation are all defined in the Determination. These definitions apply when determining if a grant is a recovery grant paid to such an entity for the purposes of the Determination. This ensures there is consistency between the tax law and the framework used in the Determination.

Restocking, replanting and farm infrastructure grants

1.15 Schedule 1 to the Bill also makes certain grants to primary producers for replacing or repairing farm infrastructure, restocking or replanting, or a similar purpose, non-assessable non-exempt income. Non-assessable non-exempt income tax treatment applies to a grant for the purposes of an agreement entered into between the Commonwealth and a State or Territory, such as Queensland, if:

- the agreement is signed between 1 February 2019 and 1 July 2019 (inclusive); and
- the objective of the agreement is principally to assist primary producers impacted by floods commencing in Australia in the period between 25 January 2019 and 28 February 2019 (inclusive).

[Schedule 1, item 2, section 58-86]

1.16 The amendments also apply to grants made for a similar purpose to replacing or repairing farm infrastructure, and restocking or replanting. This ensures grants are not excluded because part of the grant is for related ancillary costs and to make clear the terms replacing and repairing farm infrastructure, and restocking and replanting, have a broad meaning.

[Schedule 1, item 2, paragraph 59-86(1)(b)]

1.17 As these grants are to be made for the purposes of an agreement between the Commonwealth and a State or Territory, rather than the Determination, they will not be covered by the amendments relating to recovery grants paid for the purposes of the Determination. Instead, the amendments ensure any such payments made for the purposes of an agreement between the Commonwealth and the Queensland Government to address the effects of flooding on primary producers' farm infrastructure, their farm livestock and agricultural plants are non-assessable non-exempt income.

1.18 Consistent with the grants made under the Determination, making these grants non-assessable non-exempt income ensures the grants are not subject to income tax. The amendments also ensure the grants do not reduce the amount of a taxpayer's tax losses from prior income years that can be carried forward and applied to reduce their taxable income in future years.

Consequential amendments

1.19 The table in section 11-55 of the ITAA 1997 that lists provisions that make amounts non-assessable non-exempt income is amended to add the Category C and D measure disaster recovery grants, and the restocking, replanting and farm infrastructure grants. *[Schedule 1, item 1, table item headed 'disasters' in section 11-55]*

Application and transitional provisions

1.20 The amendments commence on the first day of the first quarter to occur after the day the Bill receives Royal Assent. *[Clause 2 of the Bill]*

1.21 The amendments apply to assessments for the 2018-19 income year and later income years in which qualifying grant amounts are derived. *[Schedule 1, item 3]*

1.22 This means the amendments apply retrospectively from the start of the 2018-19 income year. However, the amendments are beneficial to all affected taxpayers as they retrospectively ensure Category C and D measure disaster recovery grants paid to small businesses, primary producers and non-profit organisations and on-farm grants paid to primary producers are treated as non-assessable non-exempt income. This removes any obligation to pay income tax on the grants.

Chapter 2

Income tax exemption for storm assistance payments

Outline of chapter

- 2.1 Schedule 2 to the Bill amends the ITAA 1997 to exempt from income tax certain payments to primary producers that relate to storm damage sustained on or around 25 October 2018.
- 2.2 Payments may be made by the FRRR under grants totalling \$1 million from the Commonwealth to support primary producers in the Fassifern Valley, Queensland, affected by the storm.

Context of amendments

- 2.3 A number of primary producers in the Fassifern Valley, Queensland, suffered property damage, including significant damage to crops, from severe storms on 25 October 2018.
- 2.4 The Government will provide grants totalling \$1 million to fund payments to affected primary producers. The FRRR will receive the grants and will be responsible for administering payments to affected primary producers.

Summary of new law

- 2.5 Schedule 2 to the Bill amends the ITAA 1997 to make the payments to primary producers exempt income for income tax purposes. This ensures primary producers do not pay tax on payments they receive from the grants. The payments will nevertheless be taken into account in working out a primary producer's tax loss for an income year.

Detailed explanation of new law

- 2.6 There are two conditions on the eligibility of a payment for the income tax exemption.

2.7 Firstly, the payment must be made for the purposes of an agreement between the Commonwealth and the FRRR. The agreement must be one entered into principally for the purpose of providing assistance to primary producers affected by the 25 October 2018 storm in the Fassifern Valley. *[Schedule 2, item 2, paragraph 51-125(1)(a) and subsection 51-125(2) of the ITAA 1997]*

2.8 Secondly, the payment must itself relate to damage sustained by the recipient in the same storm. Damage includes damage sustained on 25 October 2018 and at other times around that date. The minor extension of the time in which damage sustained may qualify for a payment is intended to provide a limited degree of flexibility where it is not possible to establish that damage was incurred on 25 October 2018. The extension is not intended to remove the requirement the damage clearly and directly relate to the storm. *[Schedule 2, item 2, paragraph 51-125(1)(b) of the ITAA 1997]*

2.9 The payment may be made by the FRRR directly or indirectly through an intermediary. It is envisaged the FRRR will consult with community organisations in the administration of the payments and will subcontract the making of payments to a community organisation. *[Schedule 2, item 2, the note to subsection 51-125(2) of the ITAA 1997]*

2.10 The effect of the income tax exemption is that the payments to affected primary producers are not included in the recipients' assessable income (subsection 6-15(2) of the ITAA 1997).

2.11 Payments received under the grant may nevertheless reduce a taxpayer's tax loss for the income year in which the taxpayer derives the payment (subsection 36-10(3) and section 36-20 of the ITAA 1997).

Consequential amendments

2.12 The table in section 11-15 of the ITAA 1997 lists provisions that make amounts exempt income. The table is amended to include the storm assistance payments. *[Schedule 2, item 1, table item headed 'disasters' of the table in section 11-15 of the ITAA 1997]*

Application and transitional provisions

2.13 The amendments commence on the first day of the first quarter to occur after the day the Bill receives Royal Assent. *[Clause 2 of the Bill]*

2.14 The amendments apply to assessments for the 2018-19 income year and later income years in which qualifying payments are derived by primary producers. *[Schedule 2, item 3]*

2.15 This means the amendments apply retrospectively from the start of the 2018-19 income year. However, the amendments are beneficial to all affected taxpayers as they retrospectively ensure payments to primary producers are treated as exempt income. This removes any obligation to pay income tax on the payments.

Chapter 3

Loan scheme for eligible primary producers affected by floods in Northern Queensland

Outline of chapter

3.1 Schedule 3 to the Bill provides a special appropriation of \$1.75 billion for urgent assistance for eligible primary producers affected by floods in Northern Queensland. The program will consist of a scheme to provide lower interest rate loans to eligible primary producers and will be administered by the Agency.

3.2 The scheme allows for low interest loans to eligible financial institutions for up to three years to reduce their rate of borrowing. This will enable the ADIs to reduce the cost of interest on new and existing loans to eligible primary producers who were affected by floods in Northern Queensland in 2019.

Context of amendments

3.3 Following flooding in Northern Queensland in January 2019 the Government has determined that assistance is required for primary producers who have been affected.

3.4 Urgent assistance following the floods in Northern Queensland will be provided by facilitating lower interest business loans to eligible primary producers. The loan scheme will provide ADIs with lower cost loans to enable them to lower the interest charged on new and existing loans to eligible primary producers.

3.5 All Commonwealth spending must meet the requirements set out in the Constitution. The Constitution requires that an appropriation exist in law before money can be drawn from the Consolidated Revenue Fund.

3.6 A special appropriation provides authority for the appropriation of Commonwealth money for a particular purpose. Once a Bill with a special appropriation provision has been passed by Parliament and commences, ongoing authority exists for the continued expenditure of those funds for the specified purpose.

3.7 Commonwealth spending must also have legislation authorising the spending. Legislative authority for the program to provide urgent assistance to eligible primary producers affected by floods in Northern Queensland is provided through an item in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997*.

Detailed explanation of new law

3.8 Schedule 3 to the Bill appropriates an amount of \$1.75 billion from the Consolidated Revenue Fund. The appropriation is a special appropriation to allow the Commonwealth to implement a loan scheme to provide urgent assistance to eligible primary producers affected by the 2019 floods in Northern Queensland. *[Schedule 3, item 1]*

3.9 The 2019-20 Budget includes funding of up to \$1.75 billion for the loan scheme, and as such the special appropriation is limited to that amount.

Application and transitional provisions

3.10 Schedule 3 to the Bill commences the day after the bill receives the Royal Assent. *[Clause 2 of the Bill]*

Chapter 4

Statement of Compatibility with Human Rights

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

Income tax exemption for flood assistance support

4.1 Schedule 1 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

4.2 Schedule 1 to the Bill amends the ITAA 1997 to make grants non-assessable non-exempt income if they:

- are Category C or D measure disaster recovery grants paid to small businesses, primary producers or non-profit organisations; and
- relate to flooding that commenced in Australia in the period between 25 January 2019 and 28 February 2019 (inclusive).

4.3 As a result, Category C and D measure grants to small businesses, primary producers and non-profit organisations affected by floods in North Queensland in late January 2019 and that continued into February 2019 are non-assessable non-exempt income.

4.4 Schedule 1 to the Bill also amends the ITAA 1997 to make grants to primary producers non-assessable non-exempt income if the grants are for repairing or replacing farm infrastructure, restocking or replanting, and they are provided for the purposes of an agreement between the Commonwealth and a State or Territory to assist primary producers affected by the flooding.

4.5 As a result, these grants to primary producers in North Queensland affected by floods in late January 2019 that continued into February 2019 are non-assessable non-exempt income.

Human rights implications

4.6 Schedule 1 to the Bill does not engage any of the applicable rights or freedoms.

Conclusion

4.7 Schedule 1 to the Bill is compatible with human rights as it does not raise any human rights issues.

Income tax exemption for storm assistance payments

4.8 Schedule 2 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

4.9 Schedule 2 to the Bill amends the ITAA 1997 to exempt from income tax certain payments to primary producers that relate to storm damage sustained on or around 25 October 2018.

4.10 Payments may be made by the Foundation for Rural and Regional Renewal under grants totalling \$1 million from the Commonwealth to support primary producers in the Fassifern Valley, Queensland, affected by the storm.

Human rights implications

4.11 Schedule 2 to the Bill does not engage any of the applicable rights or freedoms.

Conclusion

4.12 Schedule 2 to the Bill is compatible with human rights as it does not raise any human rights issues.

Loan scheme for eligible primary producers affected by floods in Northern Queensland

4.13 Schedule 3 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

4.14 Schedule 3 to the Bill appropriates an amount of \$1.75 billion from the Consolidated Revenue Fund. The appropriation is a special appropriation to allow the Commonwealth to implement a loan scheme to provide urgent assistance to eligible primary producers affected by the 2019 floods in Northern Queensland.

Human rights implications

4.15 Schedule 3 to the Bill does not engage any of the applicable rights or freedoms.

Conclusion

4.16 Schedule 3 to the Bill is compatible with human rights as it does not raise any human rights issues.