



Treasury Laws Amendment (2016 Measures No. 1) Act 2017

No. 25, 2017

**An Act to amend the law relating to insurance,
corporations, taxation and financial services, and
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act to amend the law relating to insurance,
corporations, taxation and financial services, and
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[Assented to 4 April 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 4 April 2017 |
| 2. Schedule 1 | 1 July 2017. | 1 July 2017 |
| 3. Schedule 2 | The day after this Act receives the Royal Assent. | 5 April 2017 |
| 4. Schedule 3, Part 1 | The day after this Act receives the Royal Assent. | 5 April 2017 |
| 5. Schedule 3, Part 2 | A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, the provisions are repealed on the day after the end of that period. | |
| 6. Schedule 4 | The day after this Act receives the Royal Assent. | 5 April 2017 |
| 7. Schedule 5 | The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent. | 4 April 2018 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Terrorism Insurance Act 2003

Terrorism Insurance Act 2003

1 At the end of subsection 8(2)

Add:

- ; or (c) acts that are described using the word “chemical”, “biological”, “polluting”, “contaminating”, “pathogenic” or “poisoning” or words of similar effect.

2 Application of amendments

The amendments made by this Schedule apply in relation to:

- (a) an act or acts declared, at a particular time at or after the commencement of this Schedule, under section 6 of the *Terrorism Insurance Act 2003* to be a declared terrorist incident; and
- (b) eligible insurance contracts in force at that time (whether made before, at or after the commencement of this Schedule).

Schedule 2—Improving employee share schemes

Corporations Act 2001

1 Section 9

Insert:

aggregated turnover has the same meaning as in the *Income Tax Assessment Act 1997*.

approved stock exchange has the same meaning as in the *Income Tax Assessment Act 1997*.

equity interest has the same meaning as in the *Income Tax Assessment Act 1997*.

ESS interest has the same meaning as in the *Income Tax Assessment Act 1997*.

foreign law has the same meaning as in the *Income Tax Assessment Act 1997*.

income year has the same meaning as in the *Income Tax Assessment Act 1997*.

2 After subparagraph 1274(2)(a)(iv)

Insert:

- (iva) a disclosure document lodged under section 718, or a supplementary or replacement document lodged under section 719, in relation to an offer of an ESS interest, in a company (within the meaning of the *Income Tax Assessment Act 1997*), if the conditions set out in subsection (2AA) are satisfied; or

3 After subsection 1274(2)

Insert:

- (2AA) For the purposes of subparagraph (2)(a)(iva), the conditions are the following:

- (a) the offer is under an employee share scheme (within the meaning of the *Income Tax Assessment Act 1997*);
- (b) the disclosure document or replacement document being lodged, or the disclosure document as supplemented by the supplementary document being lodged, states that the ESS interest, in the company (within the meaning of that Act) (the *issuing company*), will:
 - (i) be made available only to employees of the issuing company or a subsidiary (within the meaning of that Act) of the issuing company; and
 - (ii) relate only to ordinary shares;
- (c) no equity interests in any of the following companies are listed for quotation in the official list of any approved stock exchange at the end of the issuing company's most recent income year (the *pre-lodgement year*) before the income year in which the disclosure document or replacement document, or the disclosure document being supplemented by the supplementary document, is lodged:
 - (i) the issuing company;
 - (ii) any subsidiary (within the meaning of that Act) of the issuing company at the end of the pre-lodgement year;
 - (iii) any holding company of the issuing company at the end of the pre-lodgement year;
 - (iv) any subsidiary (within the meaning of that Act) of a holding company of the issuing company at the end of the pre-lodgement year;
- (d) the issuing company and each of the other companies mentioned in paragraph (c) were incorporated by or under an Australian law or foreign law less than 10 years before the end of the pre-lodgement year;
- (e) the issuing company had an aggregated turnover not exceeding \$50 million for the pre-lodgement year.

(2AB) Subsection 83A-33(7) of the *Income Tax Assessment Act 1997* also applies for the purposes of subsection (2AA) of this section.

4 In the appropriate position in Chapter 10

Insert:

**Part 10.28—Transitional provisions relating to the
Treasury Laws Amendment (2016
Measures No. 1) Act 2017**

**1637 Application of subparagraph 1274(2)(a)(iva) and
subsections 1274(2AA) and (2AB)**

Subparagraph 1274(2)(a)(iva) and subsections 1274(2AA) and (2AB), as inserted by Schedule 2 to the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, apply to the following:

- (a) a disclosure document lodged under section 718 after that Schedule commences;
- (b) a replacement document lodged under section 719 after that commencement;
- (c) a supplementary document lodged under section 719 after that commencement if the disclosure document it supplements was also lodged after that commencement.

Schedule 3—DGR specific listings

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Subsection 30-20(2) (at the end of the table)

Add:

| | | |
|--------|--|---|
| 1.2.20 | The Australasian College of Dermatologists | the gift must be made for education or research in medical knowledge or science |
| 1.2.21 | College of Intensive Care Medicine of Australia and New Zealand | the gift must be made for education or research in medical knowledge or science |
| 1.2.22 | The Royal Australian and New Zealand College of Ophthalmologists | the gift must be made for education or research in medical knowledge or science |

2 Subsection 30-25(2) (at the end of the table)

Add:

| | | |
|--------|---|--|
| 2.2.44 | Australian Science Innovations Incorporated | the gift must be made on or after 1 January 2016 |
|--------|---|--|

3 Subsection 30-40(2) (at the end of the table)

Add:

| | | |
|--------|--------------------------------|--|
| 3.2.14 | The Ethics Centre Incorporated | the gift must be made on or after 24 February 2016 |
|--------|--------------------------------|--|

4 Subsection 30-80(2) (at the end of the table)

Add:

| | | |
|--------|--|--|
| 9.2.27 | Cambridge Australia Scholarships Limited | the gift must be made on or after 1 July 2016 and before 1 July 2021 |
|--------|--|--|

5 Section 30-315 (after table item 9AB)

Insert:

| | | |
|-----|--|-------------|
| 9AC | Australasian College of Dermatologists | item 1.2.20 |
|-----|--|-------------|

6 Section 30-315 (after table item 25B)

Insert:

26 Australian Science Innovations Incorporated item 2.2.44

7 Section 30-315 (after table item 28ABA)

Insert:

28AC Cambridge Australia Scholarships Limited item 9.2.27

8 Section 30-315 (after table item 33)

Insert:

34 College of Intensive Care Medicine of
Australia and New Zealand item 1.2.21

9 Section 30-315 (after table item 48)

Insert:

48AAA Ethics Centre Incorporated item 3.2.14

10 Section 30-315 (after table item 97A)

Insert:

97B Royal Australian and New Zealand College of
Ophthalmologists item 1.2.22

11 Application of amendments

The amendments made by items 1, 5, 8 and 10 of this Schedule apply in relation to gifts or contributions made on or after the commencement of this item.

Part 2—Changing the name of the Ethics Centre

Income Tax Assessment Act 1997

12 Subsection 30-40(2) (table item 3.2.14)

Omit “The Ethics Centre Incorporated”, substitute “The Ethics Centre Limited”.

13 Section 30-315 (table item 48AAA)

Omit “Ethics Centre Incorporated”, substitute “Ethics Centre Limited”.

14 Application of amendments

The amendments made by this Part apply in relation to gifts or contributions made on or after the day The Ethics Centre Incorporated’s name changes to The Ethics Centre Limited.

Schedule 4—Ex-gratia disaster recovery payments to special category visa (subclass 444) holders

Income Tax Assessment Act 1936

1 Subsection 160AAA(1) (after paragraph (aa) of the definition of *rebtable benefit*)

Insert:

- (ab) paid from the Commonwealth by way of an ex-gratia payment to which subsection (2) applies; or

2 After subsection 160AAA(1)

Insert:

- (2) This subsection applies to an ex-gratia payment known as income support allowance for special category visa (subclass 444) holders if the payment is for a disaster:
 - (a) occurring in Australia during the 2014-15 financial year or a later financial year; and
 - (b) for which a determination under subsection 36A(1) of the *Social Security Act 1991* has been made.

Income Tax Assessment Act 1997

3 Section 11-15 (table item headed “welfare”)

Before:

maintenance payment..... 51-30 and 51-50

insert:

Disaster recovery payments to special category visa
(subclass 444) holders 51-30

4 Section 13-1 (table item headed “social security and other benefit payments”)

After:

Cyclone Larry or Cyclone Monica income support
payment **160AAA(3)**

Schedule 4 Ex-gratia disaster recovery payments to special category visa (subclass 444) holders

insert:

Disaster income support allowance for special category
visa (subclass 444) holders..... **160AAA(3)**

5 Section 51-30 (after table item 5.1)

Insert:

- 5.2 an individual in the payment
receipt of an ex-gratia
payment from the
Commonwealth
known as disaster
recovery payment for
special category visa
(subclass 444)
holders for a disaster:
- (a) that occurred in
Australia during
the 2014-15
*financial year or
a later financial
year; and
 - (b) for which a
determination
under
section 1061L of
the *Social
Security Act 1991*
has been made

Schedule 5—Client money

Part 1—Client money and property

Corporations Act 2001

1 Section 761A

Insert:

authorised clearing and settlement facility means:

- (a) a licensed CS facility; or
- (b) a clearing and settlement facility that satisfies the following requirements:
 - (i) the operator of the facility is authorised to operate the facility in the foreign country in which the operator's principal place of business is located;
 - (ii) any requirements specified in regulations made for the purposes of this subparagraph.

derivative retail client money: money paid as mentioned in subsection 981A(1) is ***derivative retail client money*** if:

- (a) either:
 - (i) the financial service referred to in subparagraph 981A(1)(a)(i) is or relates to a dealing in a derivative; or
 - (ii) the financial product referred to in subparagraph 981A(1)(a)(ii) is a derivative; and
- (b) the financial service or product would be provided to the client as a retail client if:
 - (i) the service or product were provided to the client when the money is paid; and
 - (ii) section 761GA (about sophisticated investors) did not apply.

derivative retail client property: property given as mentioned in subsection 984A(1) is ***derivative retail client property*** if:

- (a) either:

Schedule 5 Client money

Part 1 Client money and property

- (i) the financial service referred to in subparagraph 984A(1)(a)(i) is or relates to a dealing in a derivative; or
- (ii) the financial product referred to in subparagraph 984A(1)(a)(ii) is a derivative; and
- (b) the financial service or product would be provided to the client as a retail client if:
 - (i) the service or product were provided to the client when the property is given; and
 - (ii) section 761GA (about sophisticated investors) did not apply.

2 Section 981D

Before “Despite”, insert “(1)”.

3 At the end of section 981D

Add:

- (2) However, if the money is derivative retail client money, subsection (1) only applies to an obligation if:
 - (a) the entry into of the derivative referred to in paragraph (1)(a) or (b) was or will be cleared through an authorised clearing and settlement facility; and
 - (b) the licensee incurred the obligation, in connection with the derivative, under the operating rules of the facility.

4 At the end of section 984B

Add:

- (3) However, if the property is derivative retail client property, subsection (2) only applies to an obligation if:
 - (a) the entry into of the derivative referred to in paragraph (2)(a) or (b) was or will be cleared through an authorised clearing and settlement facility; and
 - (b) the licensee incurred the obligation, in connection with the derivative, under the operating rules of the facility.

5 Before section 1637

Insert:

1636A Application of subsections 981D(2) and 984B(3)

- (1) Subsection 981D(2), as added by the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, applies to a use of money on or after the commencement of this section, whether the money was paid to the licensee as mentioned in subsection 981A(1) before, on or after that commencement.
- (2) Subsection 984B(3), as added by the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, applies to a use of property on or after the commencement of this section, whether the property was given to the licensee as mentioned in subsection 984A(1) before, on or after that commencement.

Part 2—Client money reporting rules

Corporations Act 2001

6 Section 761A

Insert:

client money reporting rules has the meaning given by section 981J.

7 After paragraph 793B(2)(c)

Insert:

(d) the client money reporting rules;

8 At the end of subsection 793B(2)

Add:

Note 3: If there is an inconsistency between the market integrity rules, the derivative transaction rules or the derivative trade repository rules and the client money reporting rules, the market integrity rules, the derivative transaction rules or the derivative trade repository rules prevail: see subsection 981M(2).

9 After paragraph 822B(2)(b)

Insert:

(c) the client money reporting rules;

10 Subsection 822B(2) (note)

Omit “Note”, substitute “Note 1”.

11 At the end of subsection 822B(2)

Add:

Note 2: If there is an inconsistency between the derivative transaction rules or the derivative trade repository rules and the client money reporting rules, the derivative transaction rules or the derivative trade repository rules prevail: see subsection 981M(2).

12 At the end of subsection 901E(2)

Add:

Note 3: If there is an inconsistency between the derivative transaction rules and the client money reporting rules, the derivative transaction rules prevail: see subsection 981M(2).

13 At the end of section 903D

Add:

Note 6: If there is an inconsistency between the derivative trade repository rules and the client money reporting rules, the derivative trade repository rules prevail: see subsection 981M(2).

14 After Subdivision A of Division 2 of Part 7.8

Insert:

Subdivision AA—Client money reporting rules

981J Client money reporting rules

- (1) ASIC may, by legislative instrument, make rules (the *client money reporting rules*) dealing with matters as permitted by this Subdivision, for purposes relating to derivative retail client money.
- (2) The regulations may provide that the client money reporting rules:
 - (a) cannot impose requirements (or certain kinds of requirements) in relation to certain classes of persons or money; or
 - (b) can only impose requirements (or certain kinds of requirements) in relation to certain classes of persons or money in certain circumstances.

981K Matters that may be dealt with in client money reporting rules

- (1) The client money reporting rules may impose any of the following kinds of requirements:
 - (a) requirements to report information (see also paragraph (2)(b));
 - (b) reconciliation requirements (see also paragraph (2)(c));
 - (c) requirements that are incidental or related to the requirements mentioned in paragraph (a) or (b).

- (2) The client money reporting rules may also deal with matters incidental or related to requirements referred to in subsection (1), including any of the following:
- (a) the classes of money in relation to which particular requirements apply;
 - (b) for requirements to report information:
 - (i) to whom information is required to be reported; and
 - (ii) the information that is required to be reported;
 - (c) for reconciliation requirements:
 - (i) the information that is required to be reconciled; and
 - (ii) how reconciliations are required to be reviewed or approved, including who is required to review or approve reconciliations; and
 - (iii) to whom reconciliations are required to be submitted;
 - (d) the financial services licensees who are required to comply with requirements imposed by the rules;
 - (e) the manner and form in which persons must comply with requirements imposed by the rules;
 - (f) the circumstances in which persons are, or may be, relieved from complying with requirements in the rules that would otherwise apply to them;
 - (g) the keeping of records, or the provision of records or other information, relating to accounts maintained for the purposes of section 981B;
 - (h) the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the rules;
 - (i) any matters that the regulations provide, for the purposes of this paragraph, may be dealt with in the client money reporting rules;
 - (j) any other matters that the provisions of this Act provide may be dealt with in the client money rules.
- (3) The client money reporting rules may include a penalty amount for a rule. A penalty amount must not exceed \$1,000,000.

981L ASIC to consult before making rules

- (1) ASIC must not make a client money reporting rule unless ASIC has consulted the public about the proposed rule.
-

- (2) Without limiting the ways in which ASIC may comply with the obligation in subsection (1) to consult the public about a proposed rule, ASIC is taken to comply with that obligation if ASIC, on its website:
 - (a) makes the proposed rule, or a description of the content of the proposed rule, available; and
 - (b) invites the public to comment on the proposed rule.
- (3) A failure to consult as required by subsection (1) does not invalidate a client money reporting rule.

981M Complying with client money reporting rules

- (1) Financial services licensees must comply with the client money reporting rules.

Note: This subsection is a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

- (2) If there is an inconsistency between the client money reporting rules, and any of the following other rules:
 - (a) the market integrity rules;
 - (b) the derivative transaction rules;
 - (c) the derivative trade repository rules;those other rules prevail to the extent of the inconsistency.

Note: If there is an inconsistency between the client money reporting rules and the operating rules of a licensed market or of a licensed CS facility, the client money reporting rules prevail: see subsections 793B(2) and 822B(2).

981N Alternatives to civil proceedings

- (1) The regulations may provide for a person who is alleged to have contravened subsection 981M(1) (complying with client money reporting rules) to do one or more of the following as an alternative to civil proceedings:
 - (a) pay a penalty to the Commonwealth;
 - (b) undertake or institute remedial measures (including education programs);
 - (c) accept sanctions other than the payment of a penalty to the Commonwealth;

- (d) enter into a legally enforceable undertaking.
- (2) The penalty payable under regulations made for the purposes of paragraph (1)(a) in relation to a client money rule must not exceed three-fifths of the penalty amount set out in the client money rules for the rule.
- (3) Without limiting regulations that may be made for the purposes of paragraph (1)(d), those regulations may provide for one or more of the following kinds of undertakings:
 - (a) an undertaking to take specified action within a specified period;
 - (b) an undertaking to refrain from taking specified action;
 - (c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

981P Compliance with requirements to provide data or other information to ASIC: protection from liability

If:

- (a) a financial services licensee, or a person acting on behalf of a financial services licensee:
 - (i) provides data or information to ASIC; or
 - (ii) otherwise allows ASIC access to data or information;and
 - (b) the licensee or person does so, in good faith, in compliance with a requirement imposed by or under a provision of the client money reporting rules;
- the licensee or person is not liable to an action or other proceeding, whether civil or criminal, for or in relation to the conduct mentioned in paragraph (a).

15 At the end of paragraph 1100A(1)(b)

Add “or 981M(1) (complying with client money reporting rules)”.

16 Paragraph 1101B(1)(d)

After “subsection 798H(1) (complying with market integrity rules)”, insert “or 981M(1) (complying with client money reporting rules)”.

17 Paragraph 1101B(4)(b)

Omit “or of the derivative transaction rules or the derivative trade repository rules”, substitute “of the derivative transaction rules, of the derivative trade repository rules or of the client money reporting rules”.

18 Subparagraphs 1101B(4)(c)(i) and (d)(i)

Omit “or of the derivative transaction rules or the derivative trade repository rules”, substitute “of the derivative transaction rules, of the derivative trade repository rules or of the client money reporting rules”.

19 After paragraph 1317C(gdc)

Insert:

(gdd) a decision by ASIC to make client money reporting rules under section 981J; or

(gde) a decision by ASIC to do or not do anything under regulations made for the purposes of section 981N (alternatives to civil proceedings for contraventions of client money reporting rules); or

20 Section 1317DA (paragraph (b) of the definition of *financial services civil penalty provision*)

Repeal the paragraph, substitute:

(b) items 23 to 31;

(c) items 32 to 45.

21 Subsection 1317E(1) (after table item 31)

Insert:

31A subsection 981M(1) complying with client money reporting rules

22 Subsection 1317G(1C) (heading)

Repeal the heading, substitute:

Market integrity rules and client money reporting rules

23 At the end of paragraph 1317G(1C)(b)

Add “or 981M(1) (complying with client money reporting rules)”.

24 Subsection 1317G(1D)

Omit “is the penalty amount set out in the market integrity rules”, substitute “or client money reporting rule is the penalty amount set out in the market integrity rules or client money reporting rules”.

25 Section 1317HB (heading)

Repeal the heading, substitute:

1317HB Compensation orders—market integrity rules and client money reporting rules

26 Paragraph 1317HB(1)(a)

After “subsection 798H(1) (complying with market integrity rules)”, insert “or 981M(1) (complying with client money reporting rules)”.

27 Section 1324B

After “section 901E or 903D”, insert “, subsection 981M(1)”.

28 Subsections 1325(1), (2) and (3)

After “subsection 798H(1)” (wherever occurring), insert “or 981M(1)”.

*[Minister’s second reading speech made in—
House of Representatives on 1 December 2016
Senate on 14 February 2017]*

(206/16)
