



Treasury Laws Amendment (2021 Measures No. 6) Act 2021

No. 111, 2021

**An Act to amend legislation relating to taxation,
industry codes and family law, 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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No. 111, 2021

**An Act to amend legislation relating to taxation,
industry codes and family law, and for related
purposes**

[Assented to 13 September 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2021 Measures No. 6) Act 2021*.

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. | 13 September 2021 |
| 2. Schedule 1 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | 1 October 2021 |
| 3. Schedule 2 | The day after this Act receives the Royal Assent. | 14 September 2021 |
| 4. Schedule 3 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | 1 October 2021 |
| 5. Schedule 4 | Immediately after the commencement of the provisions covered by table item 3. | 14 September 2021 |
| 6. Schedule 5, Part 1 | 1 April 2022. | 1 April 2022 |
| 7. Schedule 5, Part 2 | The later of: (a) immediately after the commencement of the provisions covered by table item 6; and (b) immediately after the commencement of the <i>Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |

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—Refund of large-scale generation shortfall charge

Income Tax Assessment Act 1997

1 Section 11-55 (after table item headed “dividends”)

Insert:

electricity generation

refund of large-scale generation shortfall charge 59-100

2 At the end of Division 59

Add:

59-100 Refund of large-scale generation shortfall charge

- (1) A payment to an entity under section 98 of the *Renewable Energy (Electricity) Act 2000* is not assessable income and is not *exempt income.
- (2) Disregard subsection (1) for the purposes of determining whether an entity can deduct expenditure that it incurs in relation to large-scale generation certificates (within the meaning of the *Renewable Energy (Electricity) Act 2000*).

3 Application

The amendments made by this Schedule apply to payments made on or after 1 January 2019.

Schedule 2—Industry code penalties under Part IVB of the Competition and Consumer Act 2010

Competition and Consumer Act 2010

1 Subsection 51AE(2)

Repeal the subsection, substitute:

- (2) If regulations prescribe an industry code (other than a code that relates to the industry of franchising), the industry code may prescribe a pecuniary penalty not exceeding 600 penalty units for a contravention of a civil penalty provision of the code.
- (2A) If regulations prescribe an industry code that relates to the industry of franchising, the industry code may do the following:
 - (a) prescribe that the pecuniary penalty for a contravention of a civil penalty provision of the code by a body corporate is the greatest of the following:
 - (i) \$10,000,000;
 - (ii) if the Court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, has obtained directly or indirectly and that is reasonably attributable to the contravention—3 times the value of that benefit;
 - (iii) if the Court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period of 12 months ending at the end of the month in which the contravention occurred;
 - (b) prescribe that the pecuniary penalty for a contravention of a civil penalty provision of the code by a person who is not a body corporate is \$500,000;
 - (c) if the code does not prescribe a pecuniary penalty mentioned in paragraph (a) or (b) for a contravention of a civil penalty provision of the code—prescribe a pecuniary penalty not exceeding 600 penalty units for the contravention.

(2B) An expression used paragraph (2A)(a) has the same meaning as in paragraph 76(1A)(b).

2 Application

- (1) The amendment made by this Schedule applies in relation to regulations made under the *Competition and Consumer Act 2010* on or after the commencement of this item.
- (2) To avoid doubt, the regulations mentioned in subitem (1) include regulations that amend regulations made before the commencement of this item.
- (3) To avoid doubt, nothing in this Schedule affects the validity of regulations made under the *Competition and Consumer Act 2010* before the commencement of this item.

Schedule 3—Requirement for actuarial certificates for certain superannuation funds

Income Tax Assessment Act 1997

1 At the end of section 295-387

Add:

- (3) However, the fund is not covered by subsection (2) for an income year if, at all times during the income year, all of the assets of the superannuation fund would, apart from subsection 295-385(7), be *segregated current pension assets.

2 Application

The amendment made by this Schedule applies to assessments for the 2021-22 income year and later income years.

Schedule 4—Strengthening industry codes under Part IVB of the Competition and Consumer Act 2010

Part 1—Main amendments

Competition and Consumer Act 2010

1 Subsection 51ACA(1) (definition of *industry code*)

Repeal the definition, substitute:

industry code has the meaning given by section 51ACAA.

2 After section 51ACA

Insert:

51ACAA Meaning of *industry code*

- (1) For the purposes of this Part, an *industry code* is (subject to subsection (2)) a code that regulates the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry.
- (2) If this Act provides that an industry code prescribed by the regulations for the purposes of this Part may include a provision of a certain kind, then:
 - (a) the regulations may prescribe, for the purposes of this Part, an industry code that includes a provision of that kind, whether or not the provision regulates conduct of a kind mentioned in subsection (1); and
 - (b) if the regulations do prescribe, for the purposes of this Part, an industry code that includes a provision of that kind, the inclusion of the provision does not prevent the code from being an *industry code* for the purposes of this Part.

3 Before subsection 51AE(1)

Insert:

Regulations may prescribe industry codes etc.

4 After subsection 51AE(1)

Insert:

Conferral of functions and powers

- (1A) If regulations prescribe an industry code, the industry code may confer on a person or body functions and powers in relation to the code, including functions and powers in relation to the following matters:
- (a) monitoring compliance with the code;
 - (b) dealing with disputes or complaints arising under, or in relation to, the code;
 - (c) dealing with matters relating to a prospective agreement (including disputes or complaints relating to such an agreement) that would, if entered into, have the effect that one or more parties to the agreement is a participant in the industry to which the code relates;
 - (d) conducting investigations under, or in relation to, the code;
 - (e) providing exemptions from the code or specified provisions of the code;
 - (f) reviewing, or reporting on, the operation of the code or activities under, or in relation to, the code;
 - (g) any other matter relating to the operation, application or administration of the code.
- (1B) For the purposes of subsection (1A), the persons or bodies on whom an industry code may confer functions and powers are:
- (a) if the function or power is a function of providing, or a power to provide, exemptions from the code or specified provisions of the code—any of the following:
 - (i) the Commission;
 - (ii) the Australian Energy Regulator;
 - (iii) a Minister (whether or not a Minister administering this provision); or
 - (b) otherwise—any person or body (whether or not a participant in the industry to which the code relates), including a person or body referred to in subparagraph (a)(i), (ii) or (iii).

How functions and powers are to be exercised

- (1C) If an industry code prescribed by the regulations confers on a person or body a function or power in relation to the code, the code may provide that the function or power is to be exercised by legislative instrument or other kind of written instrument.
- (1D) However, if an industry code confers on a person or body a function of providing, or a power to provide, exemptions from the code or specified provisions of the code, then (despite anything to the contrary in the code):
- (a) the function or power must be exercised by written instrument (an ***exemption instrument***); and
 - (b) if the code does not provide that an exemption instrument made under the code is a legislative instrument, then:
 - (i) if each exemption provided by the instrument relates to a particular entity—the instrument is a notifiable instrument; or
 - (ii) otherwise—the instrument is a legislative instrument.

Note: If the code provides that an exemption instrument made under the code is a legislative instrument, then the instrument is a legislative instrument: see subsection 8(2) of the *Legislation Act 2003*.

Requirements to provide information

- (1E) An industry code prescribed by the regulations:
- (a) may require a person or body to provide another person or body with information or documents relevant to the operation, application or administration of the code (whether or not any of those persons or bodies are participants in the industry to which the code relates); and
 - (b) may confer on a person or body (whether or not a participant in the industry to which the code relates) a function of imposing, or a power to impose, a requirement of the kind mentioned in paragraph (a).
- (1F) Paragraph (1E)(b) does not limit subsection (1A).

5 Before subsection 51AE(2)

Insert:

Pecuniary penalties

6 Before subsection 51AE(3)

Insert:

Incorporation of matters contained in other instruments

7 After section 51AE

Insert:

51AEAA Functions and powers of Commission under industry codes

To avoid doubt, the functions and powers of the Commission under this Act include any function or power conferred on the Commission by an industry code prescribed for the purposes of this Part.

8 At the end of Division 6 of Part IVB

Add:

51AF Acquisition of property

Scope

- (1) This section applies to the following provisions:
 - (a) paragraphs 51AE(1A)(b) and (c);
 - (b) a provision of an industry code prescribed for the purposes of this Part that is authorised by paragraph 51AE(1A)(b) or (c);
 - (c) any other provision of this Act or the regulations, to the extent to which the provision relates to a provision mentioned in paragraph (a) or (b) of this subsection.

Effect of provisions

- (2) The provisions have no effect to the extent (if any) to which their operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

Part 2—Application and validation provisions

9 Application provision—requirements for exemption instruments

Subsection 51AE(1D) of the *Competition and Consumer Act 2010*, as inserted by Part 1 of this Schedule, applies in relation to the exercise of a function or power referred to in that subsection that occurs on or after the commencement of this item.

10 Validation of regulations made, and acts and things done, before commencement

- (1) This item applies to:
 - (a) regulations (the *earlier regulations*) prescribing industry codes for the purposes of Part IVB of the *Competition and Consumer Act 2010* that were made, or purportedly made, under that Act before the commencement of this item (whether or not the regulations are still in force); and
 - (b) acts or things done, or purportedly done, under the earlier regulations before the commencement of this item.
- (2) The earlier regulations, and the acts or things, are as valid and effective, and are taken always to have been as valid and effective, as they would have been if the earlier regulations had been made under the *Competition and Consumer Act 2010* as amended by Part 1 of this Schedule.
- (3) For the purposes of subitem (2), treat the *Competition and Consumer Act 2010* as amended by Part 1 of this Schedule as not including subsection 51AE(1D) of that Act (as inserted by Part 1 of this Schedule).

11 Acquisition of property

Item 10 has no effect to the extent (if any) to which its operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

Schedule 5—Superannuation information for family law proceedings

Part 1—Main amendments

Family Law Act 1975

1 At the end of Division 5 of Part VIII B

Add:

90XZJ Requests for Commissioner of Taxation to provide superannuation information

Application for superannuation information

- (1) A person who is a party to property settlement proceedings:
 - (a) in the Federal Circuit and Family Court of Australia in relation to the person's marriage or de facto relationship with another person; or
 - (b) in the Family Court of Western Australia in relation to the person's marriage with another person;may apply, in the approved form, to a Senior Registry official of that Court for that official to request the superannuation information of that other person (the *other party*).

Request for superannuation information

- (2) If a Senior Registry official of a Court receives an application from a person under subsection (1) for the superannuation information of the other party, the official may:
 - (a) request the Commissioner of Taxation to disclose that superannuation information for the purpose of those proceedings; and
 - (b) if the Commissioner of Taxation discloses that superannuation information to the official for the purpose of those proceedings—disclose the superannuation information to the following:
 - (i) the person and each lawyer of the person;

(ii) the other party and each lawyer of the other party; for the person, other party or lawyer to make a record of, or disclose, for the purpose of those proceedings.

Note 1: Making a record of, or on-disclosing, that superannuation information may be an offence unless it is for the purpose of those proceedings, see sections 355-155 and 355-175 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: Disclosing superannuation information for the purpose of those proceedings extends to disclosing the superannuation information to the trustee of an eligible superannuation plan as part of an application under section 90XZB for the purpose of those proceedings.

Approved form

- (3) An application made by a person under subsection (1) is in the approved form if and only if:
- (a) for an application to a Senior Registry official of the Federal Circuit and Family Court of Australia—it is:
 - (i) in the form approved in writing by the Chief Executive Officer; and
 - (ii) given in the manner required by the Chief Executive Officer (which may include electronically); and
 - (b) for an application to a Senior Registry official of the Family Court of Western Australia—it is:
 - (i) in the form approved in writing by the official; and
 - (ii) given in the manner required by the official (which may include electronically); and
 - (c) it contains the information (including any declaration) that the form requires.

Delegation

- (4) The Senior Registry official of the Family Court of Western Australia may, in writing, delegate any of the Senior Registry official's functions or powers under this section to any other appropriate officer or staff member of that Court.

Definitions

- (5) In this section:

Senior Registry official:

- (a) of the Federal Circuit and Family Court of Australia—means a Registry Manager of that Court; or
- (b) of the Family Court of Western Australia—means the Principal Registrar of that Court.

superannuation information, of a person, means information about the following:

- (a) the identity of each superannuation interest (within the meaning of the *Income Tax Assessment Act 1997*) held by the person and the value of that interest most recently reported to the Commissioner of Taxation under a taxation law (within the meaning of that Act);
- (b) the identity and value of any account (within the meaning of the *Small Superannuation Accounts Act 1995*) in the person's name;
- (c) any amounts payable by the Commissioner of Taxation to the person, or for the benefit of the person, under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*;
- (d) any amounts of a shortfall component (within the meaning of Part 8 of the *Superannuation Guarantee (Administration) Act 1992*) that is payable to the person, or for the benefit of the person, under that Part;
- (e) any amounts payable by the Commissioner of Taxation to the person, or for the benefit of the person, under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

Note: Paragraphs (c) to (e) of the definition of ***superannuation information*** cover amounts that are payable, but have not been paid, at the time a request for superannuation information is considered by the Commissioner of Taxation.

Taxation Administration Act 1953

2 Subsection 355-65(3) in Schedule 1 (after table item 8)

Insert:

8A a Senior Registry official (within (a) is of superannuation information

Schedule 5 Superannuation information for family law proceedings

Part 1 Main amendments

the meaning of section 90XZJ of the *Family Law Act 1975*) of a court in response to that official's request under that section (within the meaning of that section); and (b) is for the purpose of property settlement proceedings (within the meaning of that Act).

3 Application of amendments

- (1) The amendment of the *Family Law Act 1975* made by this Part applies in relation to:
- (a) property settlement proceedings that are in the Federal Circuit and Family Court of Australia at or after the commencement of this Part; or
 - (b) property settlement proceedings, in relation to the parties to a marriage, that are in the Family Court of Western Australia at or after the commencement of this Part;
- whether the proceedings commenced before, at or after the commencement of this Part.
- (2) The amendment of the *Taxation Administration Act 1953* made by this Part applies in relation to records or disclosures of information made at or after the commencement of this Part, whether the information was obtained before, at or after the commencement of this Part.

Part 2—Other amendments

Family Law Act 1975

4 At the end of Division 5 of Part VIIC

Add:

90YZY Requests for Commissioner of Taxation to provide superannuation information

Application for superannuation information

- (1) A person who is a party to either of the following proceedings in the Family Court of Western Australia, in relation to the person's de facto relationship with another person (the *other party*):
 - (a) proceedings in relation to matters arising under this Part;
 - (b) proceedings under the *Family Court Act 1997* (WA) with respect to the property of the parties to the de facto relationship or either of them, if the person is considering bringing, or is a party to, related proceedings in relation to matters arising under this Part;

may apply, in the approved form, to the Principal Registrar of that Court for the Principal Registrar to request the superannuation information of that other party.

Request for superannuation information

- (2) If the Principal Registrar of that Court receives an application from a person under subsection (1) for the superannuation information of the other party, the Principal Registrar may:
 - (a) request the Commissioner of Taxation to disclose that superannuation information for the purpose of all of the following proceedings (the *relevant proceedings*) in relation to the person's de facto relationship with the other party:
 - (i) any proceedings in relation to matters arising under this Part;
 - (ii) any proceedings under the *Family Court Act 1997* (WA) with respect to the property of the parties to the de facto

relationship or either of them, if the person is considering bringing, or is a party to, related proceedings in relation to matters arising under this Part; and

- (b) if the Commissioner of Taxation discloses that superannuation information to the Principal Registrar for the purpose of the relevant proceedings—disclose the superannuation information to the following:
- (i) the person and each lawyer of the person;
 - (ii) the other party and each lawyer of the other party;
- for the person, other party or lawyer to make a record of, or disclose, for the purpose of the relevant proceedings.

Note 1: Making a record of, or on-disclosing, that superannuation information may be an offence unless it is for the purpose of the relevant proceedings, see sections 355-155 and 355-175 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: Disclosing superannuation information for the purpose of proceedings relating to matters arising under this Part extends to disclosing the superannuation information to the trustee of an eligible superannuation plan as part of an application under section 90YZR for the purpose of those proceedings.

Approved form

- (3) An application made by a person under subsection (1) is in the approved form if and only if:
- (a) it is in the form approved for the purposes of subparagraph 90XZJ(3)(b)(i); and
 - (b) it contains the information (including any declaration) that the form requires; and
 - (c) it is given in the manner required for the purposes of subparagraph 90XZJ(3)(b)(ii) (which may include electronically).

Delegation

- (4) The Principal Registrar of the Family Court of Western Australia may, in writing, delegate any of the Principal Registrar's functions or powers under this section to any other appropriate officer or staff member of that Court.

Definitions

(5) In this section:

relevant proceedings has the meaning given by paragraph (2)(a).

superannuation information has the same meaning as in subsection 90XZJ(5).

Taxation Administration Act 1953

5 Subsection 355-65(3) in Schedule 1 (after table item 8A)

Insert:

- | | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8B | the Principal Registrar of the Family Court of Western Australia in response to the Principal Registrar's request under section 90YZY of the <i>Family Law Act 1975</i> | (a) is of superannuation information (within the meaning of that section); and (b) is for the purpose of all of the relevant proceedings (within the meaning of that section). |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

6 Application of amendments

- (1) The amendment of the *Family Law Act 1975* made by this Part applies in relation to proceedings referred to in this Part that are in the Family Court of Western Australia at or after the commencement of this Part, whether the proceedings commenced before, at or after the commencement of this Part.
- (2) The amendment of the *Taxation Administration Act 1953* made by this Part applies in relation to records or disclosures of information made at or after the commencement of this Part, whether the information was obtained before, at or after the commencement of this Part.

[*Minister's second reading speech made in—
House of Representatives on 11 August 2021
Senate on 31 August 2021*]

(97/21)
