Treasury Laws Amendment (2022 Measures No. 4) Act 2023

No. 29, 2023

An Act to amend the law relating to taxation, superannuation and the Clean Energy Finance Corporation, and for related purposes

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

Contents

1 Short title 1
2 Commencement 2
3 Schedules 2

Schedule 1—Digital games tax offset 4

Income Tax Assessment Act 1997 4

Schedule 2—Taxation treatment of digital currency 32

Part 1—Main amendments 32

A New Tax System (Goods and Services Tax) Act 1999 32

A New Tax System (Goods and Services Tax) Regulations 2019 32

Income Tax Assessment Act 1997 34

Part 2—Application of amendments 35

A New Tax System (Goods and Services Tax) Regulations 2019 35

Schedule 3—Reducing the compliance burden of record keeping for fringe benefits tax 36

Fringe Benefits Tax Assessment Act 1986 36

Schedule 4—Skills and Training Boost 38

Income Tax (Transitional Provisions) Act 1997 38

Schedule 5—Technology investment boost 42

Income Tax (Transitional Provisions) Act 1997 42

Schedule 6—Financial reporting and auditing requirements for superannuation entities 47

Part 1—Amendment of the Corporations Act 2001 47

Corporations Act 2001 47

Part 2—Amendments of other Acts 87

Australian Securities and Investments Commission Act 2001 87

Superannuation Industry (Supervision) Act 1993 87

Schedule 8—Amendment of the Clean Energy Finance Corporation Act 2012 119

Clean Energy Finance Corporation Act 2012 119

Authorised Version C2023A00029

Schedule 9—Taxation of military superannuation benefits: Reversing the Douglas decision 121

Income Tax Assessment (1997 Act) Regulations 2021 121

Income Tax Assessment Act 1997 124

Income Tax (Transitional Provisions) Act 1997 126

Authorised Version C2023A00029

Treasury Laws Amendment (2022 Measures No. 4) Act 2023

No. 29, 2023

An Act to amend the law relating to taxation, superannuation and the Clean Energy Finance Corporation, and for related purposes

[*Assented to 23 June 2023*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*.

Authorised Version C2023A00029

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.	23 June 2023
2. Schedules 1 to 5	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 July 2023
3. Schedule 6	1 July 2023.	1 July 2023
5. Schedules 8 and 9	The day after this Act receives the Royal Assent.	24 June 2023

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.

Note 1: The provisions of the *A New Tax System (Goods and Services Tax) Regulations 2019* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by regulations made under the *A New Tax System (Goods and Services Tax) Act 1999* (see subsection 13(5) of the *Legislation Act 2003*).

Authorised Version C2023A00029

Note 2: The provisions of the *Income Tax Assessment (1997 Act) Regulations 2021* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by regulations made under the *Income Tax Assessment Act 1997* (see subsection 13(5) of the *Legislation Act 2003*).

Authorised Version C2023A00029

Schedule 1—Digital games tax offset

Income Tax Assessment Act 1997

1 Section 67-23 (after table item 20)

Insert:

21	*digital games	the *tax offsets available under Division 378

2 After Division 376 of Part 3-45

Insert:

Division 378—Digital games (tax offset for Australian expenditure on digital games)

Table of Subdivisions

	Guide to Division 378
378-A	Tax offset for Australian expenditure in developing digital games
378-B	Qualifying Australian development expenditure
378-C	Certificates for digital games tax offset
378-D	Review and other matters

Guide to Division 378

378-1 What this Division is about

Companies may be entitled to a refundable tax offset in relation to qualifying Australian development expenditure incurred in completing or porting a digital game, or carrying on ongoing development of digital games in an income year.

This offset is designed to support the growth of the digital games industry in Australia by providing concessional tax treatment for Australian expenditure.

Authorised Version C2023A00029

One of the requirements for entitlement to the digital games tax offset is that the company must be issued with a certificate in respect of the completion, porting or ongoing development of a digital game. The certificate specifies the amount of qualifying Australian development expenditure determined by the Arts Minister in respect of the completion, porting or ongoing development of the digital game.

The amount of the refundable tax offset for an income year for a company is up to 30% of the sum of the determined totals of qualifying Australian development expenditure specified in certificates issued to the company for the income year.

Subdivision 378-A—Tax offset for Australian expenditure in developing digital games

Table of sections

378-10 Company entitled to refundable tax offset for Australian expenditure incurred in developing digital games

378-15 Amount of digital games tax offset

378-20 Meaning of *digital game*

378-25 Arts Minister must issue certificate for the digital games tax offset

378-30 Arts Minister to determine a company's qualifying Australian development expenditure for the digital games tax offset

378-10 Company entitled to refundable tax offset for Australian expenditure incurred in developing digital games

(1) A company is entitled to a *tax offset under this section (the ***digital games tax offset***) for an income year if:

(a) the *Arts Minister has issued one or more certificates to the company for the income year under section 378-25 (certificate for the digital games tax offset); and

(b) the company claims the offset in its *income tax return for the income year; and

(c) the company:

(i) is an Australian resident that has an *ABN; or

(ii) is a foreign resident that has a *permanent establishment in Australia and an ABN;

Authorised Version C2023A00029

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

Note: The digital games tax offset is a refundable tax offset: see section 67-23.

(2) The claim referred to in paragraph (1)(b) may be varied to take account of a variation under subsection 378-15(5) of a notice given under subsection 378-15(3) by the company in relation to the income year. Otherwise, the claim is irrevocable.

378-15 Amount of digital games tax offset

(1) Subject to subsection (2), the amount of the digital games tax offset for a company for an income year is the lower of:

(a) 30% of the sum of all the amounts determined by the *Arts Minister under section 378-30 that are specified in certificates issued to the company for the income year under section 378-25; and

(b) $20,000,000.

(2) If the sum of the amounts of the digital games tax offset for an income year worked out under subsection (1) for:

(a) the company; and

(b) each other company (each of which is a ***related company***) that is *connected with or is an *affiliate of the company;

is greater than $20,000,000, the amount of the digital games tax offset for the company is:

(c) if the requirements of subsections (3) and (4) are satisfied—the amount specified in the notice given by the company under subsection (3); or

(d) otherwise—nil.

(3) The requirements of this subsection are:

(a) the company gives the Commissioner a notice in the *approved form specifying an amount that is not more than 30% of the sum of all the amounts determined by the *Arts Minister under section 378-25 that are specified in certificates issued to the company for the income year under section 378-30; and

Authorised Version C2023A00029

(b) one or more of the related companies also give the Commissioner a notice in the approved form specifying an amount that is not more than 30% of the sum of all the amounts determined by the Arts Minister under section 378-25 that are specified in certificates issued to the related company for the income year under section 378-30; and

(c) the sum of all the amounts specified in the notices given by the company and those related companies does not exceed $20,000,000.

Example: Bilby Co is primarily responsible for developing a digital game. Wombat Co, a company connected with Bilby Co, is also primarily responsible for developing a digital game. The amount worked out under subsection (1) is $15,000,000 for the income year for each company. Since the sum of these amounts exceeds $20,000,000, the companies must coordinate with one another to ensure that the amount collectively claimed stays under the $20,000,000 cap. Bilby Co and Wombat Co agree that for the income year, they will each give the Commissioner a notice specifying $10,000,000 in notices. If they both do so, each will receive an offset of $10,000,000 for the income year.

(4) A notice given under subsection (3) by a company in relation to an income year must be given at the same time as the company claims the digital games *tax offset in its *income tax return for the income year.

(5) A company may vary the amount specified in a notice given under subsection (3) in relation to an income year if:

(a) in specifying the amount in the notice:

(i) the company made an inadvertent error in determining whether another company is a related company; and

(ii) as a result the company did not take account of the amount of the digital games tax offset for the other company for the income year; and

(b) the company gives the Commissioner a notice in the *approved form specifying the varied amount.

Otherwise, the notice is irrevocable.

378-20 Meaning of digital game

(1) A ***digital game*** is a game in electronic form that is capable of generating a display on:

Authorised Version C2023A00029

(a) a portable electronic device; or

(b) a computer monitor, television screen, liquid crystal display or similar medium;

that allows for the playing of an interactive game.

(2) A component of a *digital game is taken to be a digital game if:

(a) a company that:

(i) is a foreign resident that does not have a *permanent establishment in Australia; and

(ii) owns or controls the rights to develop the digital game;

engages another company (the ***Australian developer***) to develop the component of the digital game; and

(b) the Australian developer:

(i) is an Australian resident that has an *ABN, or is a foreign resident that has a *permanent establishment in Australia and an ABN; and

(ii) is primarily responsible for undertaking activities necessary for the development of the digital game in Australia.

378-25 Arts Minister must issue certificate for the digital games tax offset

Completion certificate

(1) The *Arts Minister must issue a certificate (a ***completion certificate***) to a company for an income year in relation to a *digital game if:

(a) the game is *completed in the income year; and

(b) the company has made an application for a completion certificate in relation to the game; and

(c) the total of the company's *qualifying Australian development expenditure on the game incurred in completing the game is at least $500,000; and

(d) the Arts Minister is satisfied that the conditions in subsection (7) (about the type of game) are met for the game; and

(e) the Arts Minister is satisfied that the company:

(i) has developed the game as an original game; and

Authorised Version C2023A00029

(ii) is primarily responsible for undertaking activities necessary for the development of the game in Australia.

Note: The operation of paragraph (e) is affected by paragraph 378-45(1)(d) (which deals with the situation where one company takes over the development of a digital game from another company).

(2) A *digital game is ***completed*** on the earlier of:

(a) when the game is first released to the general public (other than for testing purposes); or

(b) if the game is developed by a company under a contract entered into at *arm's length with another entity—when the company first provides a version of the game to the entity in a state where it could reasonably be regarded as ready to be released to the general public.

Porting certificate

(3) The *Arts Minister must issue a certificate (a ***porting certificate***) to a company for an income year in relation to a *digital game if:

(a) the game is *ported in the income year; and

(b) the company has made an application for a porting certificate in relation to the game; and

(c) the total of the company's *qualifying Australian development expenditure on the game incurred in porting the game is at least $500,000; and

(d) the Arts Minister is satisfied that the conditions in subsection (7) (about the type of game) are met for the game; and

(e) the Arts Minister is satisfied that the company:

(i) either owns or controls the rights to develop the game or has been engaged to develop the game by the entity who owns or controls the rights to develop the game; and

(ii) is primarily responsible for undertaking activities necessary for the development of the game in Australia.

Note: The operation of subparagraph (e)(ii) is affected by paragraph 378-45(1)(d) (which deals with the situation where one company takes over the development of a digital game from another company).

Authorised Version C2023A00029

(4) A *digital game that has been *completed is ***ported*** on the earlier of:

(a) when the game is first made available to the general public (other than for testing purposes) on a new platform; or

(b) if the company developed the game under a contract entered into at *arm's length with another entity—when the company first provides a version of the game to the entity in a state where it could reasonably be regarded as ready to be made available to the general public on a new platform.

Ongoing development certificate

(5) The *Arts Minister must issue a certificate (an ***ongoing development certificate***) to a company for an income year in relation to one or more *digital games if:

(a) *ongoing development on the games occurs in the income year; and

(b) the company has made an application for the ongoing development certificate; and

(c) the total of the company's *qualifying Australian development expenditure on the games incurred in the income year on the ongoing development of the games in the income year is at least $500,000; and

(d) the Arts Minister is satisfied that the conditions in subsection (7) (about the type of game) are met for each of the games; and

(e) the Arts Minister is satisfied that the company:

(i) either owns or controls the rights to develop each of the games or has been engaged to develop the games by the entities who own or control the rights to develop the games; and

(ii) is primarily responsible for undertaking activities necessary for the development of each of the games in Australia.

Note: The operation of subparagraph (e)(ii) is affected by paragraph 378-45(1)(d) (which deals with the situation where one company takes over the development of a digital game from another company).

Authorised Version C2023A00029

(6) ***Ongoing development*** on a *digital game means activities undertaken to update, improve or maintain the game after it has been *completed.

Type of digital game

(7) The conditions in this subsection that must be met for a *digital game are:

(a) the game is primarily developed to be made available to the general public for entertainment or educational purposes; and

(b) any of the following apply to the game:

(i) the game is made available for use over the internet;

(ii) the game is primarily played through the internet;

(iii) the game operates only when a player is connected to the internet; and

(c) the game is *not* any of the following:

(i) a game that is a gambling service (within the meaning of the *Interactive Gambling Act 2001*), or is substantially comprised of gambling or gambling-like practices;

(ii) a game that contains material likely to lead to the game being refused classification under the *Classification (Publications, Films and Computer Games) Act 1995*;

(iii) a game that is primarily developed for industrial, corporate or institutional purposes;

(iv) a game that is primarily developed to advertise or promote a product, entity or service.

Example 1: A slot machine simulator game would fail to satisfy the condition that the digital game must not be a gambling service or substantially comprise of gambling or gambling-like practices, even if the game did not involve any real money or money equivalent. However, an adventure game in which a player may advance to a higher level by winning a game of poker could still meet this condition.

Example 2: An interactive corporate training program would fail to satisfy the condition that the digital game must not be primarily developed for corporate purposes.

Authorised Version C2023A00029

378-30 Arts Minister to determine a company's qualifying Australian development expenditure for the digital games tax offset

(1) The *Arts Minister must, as soon as practicable after deciding to issue a certificate under section 378-25 to a company, determine for the purposes of the digital games tax offset:

(a) if the certificate is to be issued under subsection 378-25(1) (completion certificate) to the company for an income year in relation to a *digital game—the total of the company's *qualifying Australian development expenditure on the game incurred in *completing the game, whether incurred in that income year or in an earlier income year; or

(b) if the certificate is to be issued under subsection 378-25(3) (porting certificate) to the company for an income year in relation to a digital game—the total of the company's qualifying Australian development expenditure on the game incurred in *porting the game, whether incurred in that income year or in an earlier income year; or

(c) if the certificate is to be issued under subsection 378-25(5) (ongoing development certificate) to the company for an income year in relation to one or more digital games—the total of the company's qualifying Australian development expenditure on the games incurred in the income year on the *ongoing development of the games in the income year.

(2) The determination must be in writing, but is not a legislative instrument.

(3) In making the determination, the *Arts Minister must have regard to the matters in Subdivision 378-B.

(4) The *Arts Minister must give the company written notice of the determination (including reasons for the determination).

Subdivision 378-B—Qualifying Australian development expenditure

Table of sections

378-35 Development expenditure

Authorised Version C2023A00029

378-40 Qualifying Australian development expenditure
378-45 Expenditure incurred by prior companies in completing or porting a digital game
378-50 Expenditure to be worked out excluding GST

378-35 Development expenditure

(1) A company's ***development expenditure*** on a *digital game is expenditure that the company incurs in, or in relation to, the development of the game.

Specific inclusions

(2) Without limiting subsection (1), the following expenditure of the company in relation to the *digital game is ***development expenditure*** on the game:

(a) remuneration provided to persons (including independent contractors but excluding persons of a kind referred to in subsection (5)) who perform work or services directly for the company that are attributable to the development of the game, including the following:

(i) project managers and artistic, creative and design directors;

(ii) game designers;

(iii) software developers and programmers;

(iv) engineers (including for audio, graphics, physics and software);

(v) user experience designers and testers;

(vi) behaviour analysts;

(vii) quality assurance testers;

(viii) writers;

(ix) artists, animators and performers (for music, voice and motion capture);

(x) songwriters, composers, musicians and sound designers;

(xi) persons performing roles that are broadly similar to those described in subparagraphs (i) to (x);

(b) expenditure on research for the game;

(c) expenditure on prototyping for the game;

Authorised Version C2023A00029

(d) expenditure on underlying game infrastructure (for example, game engines and anti-cheating controls);
(e) expenditure on user testing, debugging and collecting user data for the game;
(f) expenditure on updating the game;
(g) expenditure on obtaining or maintaining a classification under the *Classification (Publications, Films and Computer Games) Act 1995*;
(h) expenditure on adapting the game for use on particular platforms.

Specific exclusions

(3) Despite subsections (1) and (2), the following expenditure of the company in relation to the *digital game is not ***development expenditure*** on the game:
(a) the company's general business overheads including, for example:
(i) expenditure incurred in relation to insurance, audit services, accounting services, human resources, recruitment services and legal services; and
(ii) expenditure on travel, accommodation, catering, entertaining or hospitality; and
(iii) expenditure on visas or work permits; and
(iv) expenditure incurred by way of, or in relation to, the financing of the game or company;
(b) expenditure on, or in connection with, the following persons:
(i) employees and independent contractors whose roles are not related to, or are incidental and not directly attributable to, the development of the game (including for example, administrative employees, social media managers, sales and marketing professionals, community managers and forum administrators and moderators);
(ii) employees and independent contractors who were not Australian residents at the time the expenditure was incurred;
(c) expenditure on the use of land or premises;

Authorised Version C2023A00029

(d) expenditure on computer hardware or servers, or the rights to access computer hardware or servers;

(e) expenditure on acquiring or licensing software;

(f) expenditure on marketing, advertising, publicity or promotion for the game or company;

(g) expenditure on activities that are incidental to, but not directly attributable to, the development of the game (including, for example, expenditure on externally provided training, conferences, hiring equipment, release events and trade show demonstrations);

(h) expenditure incurred to acquire copyright or a trade mark, or a licence in relation to copyright or a trade mark (other than in relation to acquiring a licence for employees or contractors);

(i) expenditure on obtaining permission to use the image, likeness or name of a person or entity, or obtaining an endorsement by a person or entity;

(j) expenditure on distributing the game;

(k) expenditure on acquiring users for the game;

(l) any expenditure claimed for the purposes of another *tax offset, including for the purposes of section 355-100 (tax offsets for R&D);

(m) expenditure that gives rise to notional deductions for the purposes of section 355-205 (deductions for R&D expenditure);

(n) expenditure funded directly or indirectly by:

(i) a Commonwealth grant or subsidy to which Australian businesses are generally eligible; or

(ii) a State or Territory grant or subsidy to which Australian business in that State or Territory are generally eligible.

Expenditure incurred in relation to another entity

(4) Despite subsections (1) and (2), the following expenditure of the company in relation to the *digital game is not ***development expenditure*** on the game:

(a) expenditure on contracting another entity (the ***first contractor***) to perform work or services for the company where the first contractor contracts for another entity (the

Authorised Version C2023A00029

second contractor) to perform the work or services and either:

(i) the second contractor is not a natural person (including an independent contractor); or

(ii) the second contractor contracts for another entity to perform the work or services;

(b) expenditure incurred in relation to an entity that is an *associate of the company, other than an associate of a kind referred to in subsection (5);

(c) expenditure incurred in connection with a transaction in which the company and another party to the transaction did not deal with each other at *arm's length.

Remuneration of influential employees

(5) If a natural person (an ***influential employee***):

(a) is an *associate of the company because of subparagraph 318(2)(d)(i) or (ii) of the *Income Tax Assessment Act 1936*; and

(b) performs work or services directly for the company that are attributable to the development of the *digital game in an income year;

then, despite subsection (1), only the first $65,000 of remuneration provided by the company to the influential employee for the income year is ***development expenditure*** on the digital game.

Note: A minor voting interest is not sufficient for a person to be an associate of the company.

Decline in value not development expenditure

(6) To avoid doubt, the decline in the value of a *depreciating asset is not ***development expenditure*** on a *digital game.

378-40 Qualifying Australian development expenditure

(1) A company's ***qualifying Australian development expenditure*** on a *digital game is the company's *development expenditure on the game to the extent to which the expenditure:

(a) satisfies subsection (2); and

Authorised Version C2023A00029

(b) is incurred for, or is reasonably attributable to, goods and services provided or acquired in Australia.

The relevance test

(2) An item of a company's *development expenditure on a *digital game:

(a) if the item of expenditure is substantially attributable to developing the game—satisfies this subsection in full; and

(b) if the item of expenditure is not substantially attributable to developing the game—satisfies this subsection to the extent that the expenditure is attributable to developing the game.

Expenditure that does not qualify

(3) For the purposes of a *digital game in respect of which a company applies for a certificate under subsection 378-25(1) (completion certificate), an item of the company's *development expenditure on the game is not ***qualifying Australian development expenditure*** to the extent it is incurred after the earliest of the following:

(a) the day on which the game is *completed;

(b) the day on which the company applies for the certificate;

(c) the day on which the game has been available to the general public for the purposes of conducting testing for one year.

(4) For the purposes of a *digital game in respect of which a company applies for a certificate under subsection 378-25(3) (porting certificate), an item of the company's *development expenditure on the game is not ***qualifying Australian development expenditure*** to the extent it is incurred after the earlier of the following:

(a) the day on which the game is *ported;

(b) the day on which the company applies for the certificate.

(5) You cannot count the same expenditure as *qualifying Australian development expenditure for the purposes of more than one certificate under section 378-25.

Example: Expenditure on porting a digital game that is claimed as qualifying Australian development expenditure for the purposes of a certificate under subsection 378-25(3) (porting certificate) cannot be claimed for the purposes of a certificate under subsection 378-25(5) (ongoing development certificate).

Authorised Version C2023A00029

378-45 Expenditure incurred by prior companies in completing or porting a digital game

Expenditure incurred by outgoing company attributed to incoming company

(1) For the purposes of this Division, if a company (the ***incoming company***) takes over the development of a *digital game from another company (the ***outgoing company***):

(a) expenditure incurred by the outgoing company in relation to *completing or *porting the game is taken to have been incurred by the incoming company; and

(b) for the purposes of determining the extent to which that expenditure is *qualifying Australian development expenditure of the incoming company, the incoming company is taken:

(i) to have been an Australian resident at any time when the outgoing company was an Australian resident; and

(ii) to have been a foreign resident at any time when the outgoing company was a foreign resident; and

(iii) to have had a *permanent establishment in Australia at any time when the outgoing company had a permanent establishment in Australia; and

(iv) to have had an *ABN at any time when the outgoing company had an ABN; and

(c) expenditure that the incoming company incurs in order to be able to take over the development of the game is to be disregarded for the purposes of this Division; and

(d) any activities carried out by the outgoing company in relation to the game are taken, for the purposes of paragraph 378-25(1)(e) and subparagraphs 378-25(3)(e)(ii) and (5)(e)(ii), to have been carried out by the incoming company in relation to the game.

Expenditure previously attributed to outgoing company attributed to incoming company

(2) For the purposes of subsection (1):

(a) expenditure incurred by the outgoing company in relation to *completing or *porting the *digital game includes

Authorised Version C2023A00029

expenditure that the outgoing company is itself taken to have incurred on the digital game because of the operation of subsection (1) or a previous operation of that subsection; and

(b) the outgoing company is taken:

(i) to have been an Australian resident at any time when the outgoing company is taken to have been an Australian resident because of the operation of subsection (1) or a previous operation of that subsection; and

(ii) to have been a foreign resident at any time when the outgoing company was a foreign resident because of the operation of subsection (1) or a previous operation of that subsection; and

(iii) to have had a *permanent establishment in Australia at any time when the outgoing company is taken to have had a permanent establishment in Australia because of the operation of subsection (1) or a previous operation of that subsection; and

(iv) to have had an *ABN at any time when the outgoing company is taken to have had an ABN because of the operation of subsection (1) or a previous operation of that subsection; and

(c) activities carried out by the outgoing company in relation to the digital game include activities that the outgoing company is taken to have carried out in relation to the digital game because of the operation of subsection (1) or a previous operation of that subsection.

Example: If Uncle Carty Ltd starts out developing a digital game and then Mr Grouble Ltd takes over the development of the digital game, Mr Grouble Ltd is taken to have incurred the expenditure that Uncle Carty Ltd incurred on the digital game. If Lousie Ltd subsequently takes over the development of the digital game from Mr Grouble Ltd, Lousie Ltd is taken to have incurred the expenditure that Mr Grouble Ltd incurred on the digital game (including the expenditure of Uncle Carty Ltd that is attributed to Mr Grouble Ltd).

378-50 Expenditure to be worked out excluding GST

In determining an amount of expenditure for the purpose of this Division, the expenditure is taken to exclude *GST.

Authorised Version C2023A00029

Subdivision 378-C—Certificates for digital games tax offset

Table of sections

378-55 Single company or head company may apply for certificate
378-60 Notice of refusal to issue certificate
378-65 Issue of certificate
378-70 Revocation of certificate
378-75 Amendment of certificate
378-80 Amendment of assessments

378-55 Single company or head company may apply for certificate

(1) A company or, if the company is a *member of a *consolidated group or a *MEC group, the *head company of the consolidated group or MEC group may:

(a) if all the company's *qualifying Australian development expenditure on a *digital game has been incurred in *completing the game—apply to the *Arts Minister for the issue of a certificate under subsection 378-25(1) (completion certificate) in relation to the game; or

(b) if all the company's qualifying Australian development expenditure on a digital game has been incurred in *porting the game—apply to the Arts Minister for the issue of a certificate under subsection 378-25(3) (porting certificate) in relation to the game; or

(c) if all the company's qualifying Australian development expenditure on a digital game or games has been incurred in an income year on the *ongoing development of the games in the income year—apply to the Arts Minister for the issue of a certificate under subsection 378-25(5) (ongoing development certificate) in relation to the games for the income year.

(2) The application must:

(a) specify which certificate is sought; and

(b) specify the company's *ABN; and

(c) specify whether the company is an Australian resident or a foreign resident with a *permanent establishment in Australia; and

Authorised Version C2023A00029

(d) contain sufficient detail to enable the *Arts Minister to determine whether an item of expenditure incurred by the company is *qualifying Australian development expenditure on the game or on the games in the income year; and

(e) be made in accordance with the rules made under section 378-100 by the Arts Minister, so far as they relate to the requirements for applications.

378-60 Notice of refusal to issue certificate

If:

(a) an application is made under subsection 378-55(1) for the issue of a certificate; and

(b) the *Arts Minister decides under section 378-25 not to issue the certificate;

the Arts Minister must give the applicant written notice of the decision (including reasons for the decision).

378-65 Issue of certificate

(1) A certificate issued to a company under section 378-25 must:

(a) be in writing; and

(b) specify the company's *ABN; and

(c) specify the date of issue of the certificate; and

(d) specify the total of the company's *qualifying Australian development expenditure on the relevant *digital game or games, as determined by the *Arts Minister under section 378-30; and

(e) if the certificate is issued under subsection 378-25(1) (completion certificate) or (3) (porting certificate)—specify:

(i) the name of the digital game to which the certificate relates; and

(ii) the income year in which the digital game was *completed or *ported (as applicable); and

(f) if the certificate is issued under subsection 378-25(5) (ongoing development certificate)—specify:

(i) the name of the digital game, or digital games, to which the certificate relates; and

Authorised Version C2023A00029

(ii) the income year for which the digital games tax offset is being sought.

(2) The *Arts Minister must give the Commissioner notice of the issue of the certificate within 30 days after issuing the certificate.

(3) The notice under subsection (2) must specify:
(a) the company's name; and
(b) the company's address; and
(c) the amount specified under paragraph (1)(d) in the certificate; and
(d) other matters agreed to between the Arts Minister and the Commissioner.

378-70 Revocation of certificate

(1) The *Arts Minister may revoke a certificate issued under section 378-25 if the Arts Minister is satisfied that:
(a) the issue of the certificate was based on inaccurate information; or
(b) the certificate was obtained by fraud or serious misrepresentation; or
(c) if the certificate is issued under subsection 378-25(1) (completion certificate) to a company for an income year in relation to a *digital game—the total of the company's *qualifying Australian development expenditure on the game incurred in *completing the game is less than $500,000; or
(d) if the certificate is issued under subsection 378-25(3) (porting certificate) to a company for an income year in relation to a digital game—the total of the company's qualifying Australian development expenditure on the game incurred in *porting the game is less than $500,000; or
(e) if the certificate is issued under subsection 378-25(5) (ongoing development certificate) to a company for an income year in relation to one or more digital games—the total of the company's qualifying Australian development expenditure on the games incurred in the income year on the *ongoing development of the games in the income year is less than $500,000.

Authorised Version C2023A00029

(2) If the *Arts Minister revokes a certificate under subsection (1), the Arts Minister must, within 30 days after the date of revocation, give written notice of the revocation to:

(a) the company to whom the certificate was issued, including reasons for the decision to revoke the certificate; and

(b) the Commissioner.

(3) If a certificate is revoked under subsection (1), it is taken, for the purposes of this Division, never to have been issued.

Note: This means that if an assessment of a company's income tax is issued on the basis that the company is entitled to the digital games tax offset and a certificate on which the entitlement is based is then revoked, the assessment will be amended to take account of the fact that the company was never entitled to the offset or was entitled to the offset to a lesser amount: see section 378-80.

(4) Subsection (3) does not apply for the purposes of:

(a) the operation of this section or section 378-85; or

(b) a review by a court or the *AAT of the decision to revoke the certificate.

378-75 Amendment of certificate

(1) The *Arts Minister may amend a certificate issued under section 378-25 at any time during the period of 4 years starting immediately after the certificate is issued if:

(a) the company to whom the certificate is issued requests, in writing, an amendment to the certificate; or

(b) the Arts Minister decides to amend the certificate on the Arts Minister's own initiative.

(2) In deciding whether to amend a certificate under subsection (1), the *Arts Minister:

(a) must have regard to the matters prescribed by the regulations; and

(b) may have regard to any other matter that the Arts Minister considers relevant.

(3) If the *Arts Minister amends a certificate under subsection (1), the Arts Minister must, within 30 days after the date of amendment,

Authorised Version C2023A00029

give written notice of the amendment (including reasons for the decision) to:

(a) the company to whom the certificate was issued; and

(b) the Commissioner.

(4) If the *Arts Minister refuses to amend a certificate upon a request by a company under paragraph (1)(a), the Arts Minister must give the company written notice of the decision (including reasons for the decision).

378-80 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment given to a company for the purposes of giving effect to this Division for an income year if:

(a) after the Commissioner gave notice of the assessment to the company, a certificate issued under section 378-25 of this Act to the company is either:

(i) amended under section 378-75 of this Act; or

(ii) revoked under section 378-70 of this Act; and

(b) the amendment of the assessment is made at any time during the period of 4 years starting immediately after the amendment or revocation of the certificate.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the periods within which assessments may be amended.

Subdivision 378-D—Review and other matters

Table of sections

378-85	Notice of decision or determination
378-90	Review of decisions by the Administrative Appeals Tribunal
378-95	Copy of digital game to be made available to the National Film and Sound Archive of Australia
378-100	Arts Minister may make rules about the digital games tax offset
378-105	Arts Minister may make rules establishing a Digital Games Tax Offset Advisory Board
378-110	Delegation by Arts Minister
378-115	Review of operation of this Division

Authorised Version C2023A00029

378-85 Notice of decision or determination

(1) This section applies to:
  (a) a notice given under section 378-60 (refusal to issue a certificate); and
  (b) a notice of a determination given under section 378-30 (determination of qualifying Australian development expenditure); and
  (c) a notice given under section 378-70 (revocation of a certificate); and
  (d) a notice given under section 378-75 (amendment or refusal to amend a certificate).

(2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).

(3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the *AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.

(4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:
  (a) setting out the findings on material questions of fact; and
  (b) referring to the evidence or other material on which those findings were based; and
  (c) giving the reasons for the decision or determination;

except where subsection 28(4) of that Act applies.

(5) If the *Arts Minister fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

378-90 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the *AAT for review of:
  (a) a decision made by the *Arts Minister under section 378-25 to refuse an application for a certificate; or

Authorised Version C2023A00029

(b) a determination made by the Arts Minister under section 378-30 (total of a company's *qualifying Australian development expenditure); or

(c) a decision made by the Arts Minister under section 378-70 to revoke a certificate; or

(d) a decision made by the Arts Minister under section 378-75 to amend or refuse to amend a certificate.

378-95 Copy of digital game to be made available to the National Film and Sound Archive of Australia

The company to whom a certificate is issued under section 378-25 must make available to the National Film and Sound Archive of Australia:

(a) a copy of each *digital game named in the certificate; and

(b) a copy of any materials provided to the general public in connection with each of those games.

378-100 Arts Minister may make rules about the digital games tax offset

The *Arts Minister may, by legislative instrument, make rules:

(a) specifying how applications for certificates in relation to the digital games tax offset are to be made, including:

(i) the form in which applications are to be made; and

(ii) the information to be provided in applications; and

(iii) methods for verifying such information; and

(iv) procedures for providing, at the Arts Minister's request, additional information in support of an application; and

(b) specifying the form and contents of certificates in relation to the digital games tax offset; and

(c) specifying how amendments of certificates in relation to the digital games tax offset are to be made, including:

(i) the form in which the request for an amendment may be made; and

(ii) circumstances in which an amendment may be requested, or made on the Arts Minister's own initiative; and

Authorised Version C2023A00029

(iii) the information to be provided in a request for an amendment; and

(iv) methods for verifying such information; and

(v) procedures for providing, at the Arts Minister's request, additional information in support of a request for an amendment; and

(d) providing for provisional certificates (including in relation to a matter referred to in paragraph (a), (b) or (c)).

378-105 Arts Minister may make rules establishing a Digital Games Tax Offset Advisory Board

The *Arts Minister may, by legislative instrument, make rules:

(a) establishing a Digital Games Tax Offset Advisory Board to:

(i) consider applications under subsection 378-55(1) for certificates under section 378-25; and

(ii) advise the Arts Minister on whether to issue certificates under section 378-25; and

(iii) perform other functions in relation to the operation of this Division (including the operation of rules made under section 378-100) as are specified in rules made under this section; and

(b) specifying the membership of the Board and the terms and conditions of appointment to the Board; and

(c) specifying procedures to be followed by the Board in performing its functions.

378-110 Delegation by Arts Minister

(1) The *Arts Minister may, in writing, delegate all or any of the Arts Minister's powers under this Division, other than under section 378-100 or section 378-105, to:

(a) the *Arts Secretary; or

(b) an SES employee, or acting SES employee, in the Department administered by the Arts Minister.

(2) In exercising powers under a delegation, the delegate must comply with any directions of the *Arts Minister.

Authorised Version C2023A00029

378-115 Review of operation of this Division

(1) The *Arts Minister must cause a review of the operation of this Division to be undertaken as soon as possible after the end of 5 years after the commencement of this Division.

(2) The review must include:

(a) the effectiveness of this Division in supporting the growth of the digital games industry in Australia; and

(b) the fiscal sustainability of the concessional tax treatment provided by this Division.

(3) A written report of the review must be given to the *Arts Minister. The report must not include information that is commercially sensitive.

(4) The *Arts Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Arts Minister.

3 Subsection 960-50(6) (after table item 9C)

Insert:

Authorised Version C2023A00029

9D	an amount that is relevant for the purposes of quantifying a company's *qualifying Australian development expenditure on a *digital game incurred in *completing the game to the extent to which the amount is relevant for the purposes of: (a) a certificate under subsection 378-25(1) (completion certificate) in relation to the game; or (b) a determination under section 378-30 in relation to such a certificate	the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period: (a) starting at the earliest time that the company incurred *development expenditure on the game in *completing the game; and (b) ending at the earlier of: (i) the last time the company incurred development expenditure on the game in completing the game; and (ii) the time the company applies for the issue of a certificate under section 378-25(1) (completion certificate) in relation to the game.
9E	an amount that is relevant for the purposes of quantifying a company's *qualifying Australian development expenditure on a *digital game incurred in *porting the game to the extent to which the amount is relevant for the purposes of: (a) a certificate under section 378-25(3) (porting certificate) in relation to the game; or (b) a determination under section 378-30 in relation to such a certificate	the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period: (a) starting at the earliest time that the company incurred *development expenditure on the game in *porting the game; and (b) ending at the earlier of: (i) the last time the company incurred development expenditure on the game in porting the game; and (ii) the time the company applies for the issue of a certificate under subsection 378-25(3) (porting certificate) in relation to the game.

Authorised Version C2023A00029

9F	an amount that is relevant for the purposes of quantifying a company's *qualifying Australian development expenditure on a *digital game or games incurred in an income year on the *ongoing development of the games in the income year to the extent to which the amount is relevant for the purposes of: (a) a certificate under subsection 378-20(5) (ongoing development certificate) in relation to the games for the income year; or (b) a determination under section 378-30 in relation to such a certificate	the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period: (a) starting at the earliest time that the company incurred *development expenditure on the games in the income year on the *ongoing development of the games in the income year; and (b) ending at the earlier of: (i) the last time the company incurred development expenditure on the games in the income year on the ongoing development of the games in the income year; and (ii) the time the company applies for the issue of certificate under subsection 378-25(5) (ongoing development certificate) in relation to the games for the income year.

4 Section 995-1 (definition of *completed*)

Repeal the definition, substitute:

completed:

(a) in relation to a *film, has the meaning given by subsection 376-55(2); and

(b) in relation to a *digital game, has the meaning given by subsection 378-25(2).

5 Section 995-1 (definition of *development expenditure*)

Repeal the definition, substitute:

development expenditure:

Authorised Version C2023A00029

(a) in relation to a *film, means expenditure to the extent to which it is incurred in meeting the development costs for the film and includes expenditure to the extent to which it is incurred on any of the following:
  (i) location surveys and other activities undertaken to assess locations for possible use in the film;
  (ii) storyboarding for the film;
  (iii) scriptwriting for the film;
  (iv) research for the film;
  (v) casting actors for the film;
  (vi) developing a budget for the film;
  (vii) developing a shooting schedule for the film; and
(b) in relation to a *digital game, has the meaning given by section 378-35.

6 Section 995-1

Insert:

digital game has the meaning given by section 378-20.

ongoing development, in relation to a *digital game, has the meaning given by subsection 378-25(6).

ported, in relation to a *digital game, has the meaning given by subsection 378-25(4).

qualifying Australian development expenditure has the meaning given by section 378-40.

7 Application provision

The amendments made by this Schedule apply in relation to expenditure incurred on or after 1 July 2022.

Authorised Version C2023A00029

Schedule 2—Taxation treatment of digital currency

Part 1—Main amendments

A New Tax System (Goods and Services Tax) Act 1999

1 Section 195-1 (paragraph (d) of the definition of *digital currency*)

Repeal the paragraph, substitute:

(d) either:

(i) are not denominated in any country's currency; or

(ii) are denominated in a currency that is not issued by, or under the authority of, an *Australian government agency or a foreign government agency (within the meaning of the *Income Tax Assessment Act 1997)*; and

2 Section 195-1 (definition of *digital currency*)

Omit all the words after paragraph (f), substitute:

but does not include a thing that, if supplied, would be a *financial supply for a reason other than being a supply of:

(g) one or more digital units of value to which paragraphs (a) to (f) apply; or

(h) *money.

3 Section 195-1 (at the end of the definition of *money*)

Add:

; or (j) one or more digital units of value to which paragraphs (a) to (f) of the definition of ***digital currency*** apply.

A New Tax System (Goods and Services Tax) Regulations 2019

4 Subsection 40-5.09(3) (table item 9)

Repeal the item, substitute:

Authorised Version C2023A00029

9	(a) Australian currency; or (b) foreign currency; or (c) one or more digital units of value to which paragraphs (a) to (f) of the definition of ***digital currency*** in section 195-1 of the Act apply; or (d) an agreement to buy or sell a thing to which paragraph (a), (b) or (c) of this item applies

5 Section 40-5.12 (table item 17)

Repeal the item, substitute:

17	(a) Australian currency, or foreign currency, the market value of which exceeds its stated value as legal tender; or (b) an agreement to buy or sell currency to which paragraph (a) applies

6 Subsection 70-5.02(1) (table item 21, paragraph (a))

Omit "the currency of a foreign country", substitute "foreign currency".

7 Subsection 70-5.02(1) (table item 21, paragraph (a))

Omit "the currency" (second occurring), substitute "foreign currency".

8 Subsection 70-5.02(1) (table item 22, paragraph (b))

Omit "the currency of a foreign country", substitute "foreign currency".

9 Subsection 70-5.02(1) (table item 22, paragraph (b))

Omit "the currency" (second occurring), substitute "foreign currency".

10 Section 196-1.01

Insert:

foreign currency means a currency other than:

(a) Australian currency; or

(b) currency that consists of digital units of value to which paragraphs (a) to (f) of the definition of ***digital currency*** in section 195-1 of the Act apply.

11 Clause 10 of Schedule 2 (table item 1, column headed "Examples", paragraph (b))

Repeal the paragraph, substitute:

Authorised Version C2023A00029

(b) foreign exchange values, foreign currency values, Australian currency values, foreign currency index values or Australian currency index values; or

Income Tax Assessment Act 1997

12 Subsection 995-1(1)

Insert:

digital currency has the same meaning as in the *GST Act.

13 Subsection 995-1(1) (definition of *foreign currency*)

Repeal the definition, substitute:

foreign currency means a currency other than:

(a) Australian currency; or

(b) *digital currency; or

(c) anything prescribed by the regulations for the purposes of this paragraph.

Authorised Version C2023A00029

Part 2—Application of amendments

A New Tax System (Goods and Services Tax) Regulations 2019

14 In the appropriate position in Chapter 7

Insert:

Part 7-3—Matters relating to the Treasury Laws Amendment (2022 Measures No. 4) Act 2023

Division 225—Application of amendments

225-1.01 Application of amendments

The amendments of this instrument made by Part 1 of Schedule 2 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* apply in relation to supplies or payments made on or after 1 July 2021.

15 Application of amendments

(1) The amendments of the *A New Tax System (Goods and Services Tax) Act 1999* made by Part 1 of this Schedule apply in relation to supplies or payments made on or after 1 July 2021.

(2) The amendment of the definition of ***foreign currency*** in subsection 995-1(1) of the *Income Tax Assessment Act 1997* made by Part 1 of this Schedule applies in relation to:

(a) an income year that includes 1 July 2021; and

(b) later income years.

Authorised Version C2023A00029

Schedule 3—Reducing the compliance burden of record keeping for fringe benefits tax

Fringe Benefits Tax Assessment Act 1986

1 After section 123

Insert:

123AA Alternatives to statutory evidentiary documents

(1) For the purposes of the operation of this Act in relation to a year of tax, a person who is an employer is taken to keep and retain a statutory evidentiary document at a time if:

(a) a determination under subsection (2) is in force at that time; and

(b) the determination specifies the year of tax; and

(c) the statutory evidentiary document is in a class of statutory evidentiary documents specified in the determination for the year of tax; and

(d) the person is in a class of persons specified in the determination for that class of statutory evidentiary documents for the year of tax; and

(e) the person keeps and retains, at that time, alternative documents or records of a kind specified in the determination for that class of persons for that class of statutory evidentiary documents for the year of tax.

(2) The Commissioner may, by legislative instrument, make a determination that specifies all of the following:

(a) one or more years of tax;

(b) one or more classes of statutory evidentiary documents for a specified year of tax;

(c) one or more classes of persons for a specified class of statutory evidentiary documents for a specified year of tax;

Authorised Version C2023A00029

(d) one or more kinds of alternative documents or records for a specified class of persons for a specified class of statutory evidentiary documents for a specified year of tax.

(3) For the purposes of paragraph (2)(d), the determination may specify a kind of documents or records only if the Commissioner is reasonably satisfied that the kind of documents or records is, for the purposes of this Act, an adequate alternative to the class of statutory evidentiary documents for which it is specified.

2 Application

The amendment made by this Schedule applies to FBT years starting on or after the commencement of this item.

Authorised Version C2023A00029

Schedule 4—Skills and Training Boost

Income Tax (Transitional Provisions) Act 1997

1 After section 328-440

Insert:

328-445 Bonus deduction for upskilling employees of small business entities etc.

Initial bonus deduction—2022-23 income year for normal or late balancers

(1) You can deduct 20% of particular expenditure for the 2022-23 income year if:

(a) you are a small business entity, or an entity covered by subsection (4), for the income year in which you incur the expenditure; and

(b) you incur the expenditure in the period:

(i) starting at 7.30 pm, by legal time in the Australian Capital Territory, on 29 March 2022; and

(ii) ending at the end of the 2022-23 income year; and

(c) you can deduct 100% of the expenditure under another provision of a taxation law (whether or not in, or wholly in, the income year in which the expenditure is incurred); and

(d) section 328-450 applies to the expenditure.

Initial bonus deduction—2023-24 income year for early balancers

(2) Subsection (1) does not apply if your 2022-23 income year starts before 1 July 2022. Instead, you can deduct 20% of particular expenditure for your 2023-24 income year if:

(a) you are a small business entity, or an entity covered by subsection (4), for the income year in which you incur the expenditure; and

(b) you incur the expenditure in the period:

(i) starting at 7.30 pm, by legal time in the Australian Capital Territory, on 29 March 2022; and

Authorised Version C2023A00029

(ii) ending at the end of your 2023-24 income year; and

(c) you can deduct 100% of the expenditure under another provision of a taxation law (whether or not in, or wholly in, the income year in which the expenditure is incurred); and

(d) section 328-450 applies to the expenditure.

Later bonus deductions

(3) You can deduct 20% of particular expenditure for an income year (the ***current year***) if:

(a) the current year is after:

(i) if your 2022-23 income year starts on or after 1 July 2022—your 2022-23 income year; or

(ii) if your 2022-23 income year starts before 1 July 2022—your 2023-24 income year; and

(b) you are a small business entity, or an entity covered by subsection (4), for the current year; and

(c) you incur the expenditure in the current year and before the end of 30 June 2024; and

(d) you can deduct 100% of the expenditure under another provision of a taxation law (whether or not in, or wholly in, the income year in which the expenditure is incurred); and

(e) section 328-450 applies to the expenditure.

Businesses with turnover under $50 million

(4) An entity is covered by this subsection for an income year if:

(a) the entity is not a small business entity for the income year; and

(b) the entity would be a small business entity for the income year if:

(i) each reference in Subdivision 328-C (about what is a small business entity) of the *Income Tax Assessment Act 1997* to $10 million were instead a reference to $50 million; and

(ii) the reference in paragraph 328-110(5)(b) of that Act to a small business entity were instead a reference to an entity covered by this subsection.

Authorised Version C2023A00029

These are bonus deductions under the Income Tax Assessment Act 1997

(5) The *Income Tax Assessment Act 1997* has effect as if this section and section 328-450 of this Act were provisions of Division 25 of the *Income Tax Assessment Act 1997*.

(6) Sections 8-10 and 355-715 of the *Income Tax Assessment Act 1997* do not apply in relation to a deduction under this section.

328-450 Expenditure eligible for the bonus deduction for upskilling employees of small business entities etc.

(1) This section applies to expenditure if:

(a) you incur the expenditure for the provision of:

(i) in-person training for one or more of your employees located in Australia; or

(ii) online training for one or more of your employees; and

(b) at each time you incur any of the expenditure for any of the training provided by a particular provider:

(i) the provider is a registered body of a kind listed in subsection (2); and

(ii) if the provider is a registered body of a kind listed in paragraph (2)(b), (c) or (d)—the training is within the provider's scope of registration for that kind of registered body; and

(c) none of the providers of the training is you or an associate of you; and

(d) each enrolment, or arrangement, for the provision of the training is made or entered into at or after 7.30 pm, by legal time in the Australian Capital Territory, on 29 March 2022; and

(e) the expenditure is charged, directly or indirectly, to you by the providers of the training.

Note: Paragraphs (b) and (c) mean this section will not apply to expenditure for on-the-job training or training provided by you in house.

(2) For the purposes of paragraph (1)(b), the kinds of registered bodies are as follows:

Authorised Version C2023A00029

(a) a registered higher education provider (within the meaning of the *Tertiary Education Quality and Standards Agency Act 2011*);

(b) a NVR registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*);

(c) a registered education and training organisation (within the meaning of the *Education and Training Reform Act 2006* (Vic.));

(d) a registered training provider (within the meaning of the *Vocational Education and Training Act 1996* (WA)).

Authorised Version C2023A00029

Schedule 5—Technology investment boost

Income Tax (Transitional Provisions) Act 1997

1 At the end of Division 328

Add:

328-455 Technology investment boost deduction

Normal or late balancers—deduction for 2022-23 income year

(1) You can deduct for the 2022-23 income year an amount that is equal to the sum of:

(a) the lower of $20,000 and 20% of the total amount (which may be nil) of your expenditure to which subsection 328-460(1) applies; and

(b) the lower of $20,000 and 20% of the total amount (which may be nil) of your expenditure to which subsection 328-460(2) applies.

Early balancers—deduction for 2023-24 income year

(2) Subsection (1) does not apply if your 2022-23 income year starts before 1 July 2022. Instead, you can deduct for your 2023-24 income year an amount that is equal to the sum of:

(a) the lower of $20,000 and 20% of the total amount (which may be nil) of your expenditure to which subsection 328-460(1) applies; and

(b) the lower of $20,000 and 20% of the total amount (which may be nil) of your expenditure to which subsection 328-460(2) applies.

These are bonus deductions under the Income Tax Assessment Act 1997

(3) The *Income Tax Assessment Act 1997* has effect as if this section and section 328-460 of this Act were provisions of Division 25 of the *Income Tax Assessment Act 1997*.

Authorised Version C2023A00029

(4) Sections 8-10 and 355-715 of the *Income Tax Assessment Act 1997* do not apply in relation to a deduction under this section.

328-460 What expenditure qualifies for the technology investment boost

(1) This subsection applies to an amount of expenditure if:

(a) you are a small business entity, or an entity covered by subsection (3), for the income year in which you incur the expenditure; and

(b) you incur the expenditure in the period starting at 7.30 pm, by legal time in the Australian Capital Territory, on 29 March 2022 and ending at the end of:

(i) if your 2022-23 income year starts on or after 1 July 2022—your 2021-22 income year; or

(ii) if your 2022-23 income year starts before 1 July 2022—your 2022-23 income year; and

(c) you can deduct the amount of the expenditure under a provision of a taxation law (other than section 328-455 of this Act) whether or not in, or wholly in, the income year in which the expenditure was incurred; and

(d) you incur the expenditure wholly or substantially for the purposes of your digital operations or digitising your operations; and

(e) the expenditure is not of a kind excluded by subsection (5); and

(f) if the expenditure is on a depreciating asset—the only balancing adjustment events that occur for the asset at a time during the period referred to in paragraph (b) when you hold the asset occur because you stop holding the asset because of an event or circumstance referred to in subsection 40-365(2) (about involuntary disposals) of the *Income Tax Assessment Act 1997*; and

(g) if:

(i) the expenditure is on a depreciating asset; and

(ii) the asset is not in-house software allocated to a software development pool for the income year in which you incur the expenditure;

Authorised Version C2023A00029

you start to use the asset, or have it installed ready for use for a taxable purpose, before 1 July 2023.

(2) This subsection applies to an amount of expenditure if:

(a) you are a small business entity, or an entity covered by subsection (3), for the income year in which you incur the expenditure; and

(b) you incur the expenditure in the period starting at the start of:

(i) if your 2022-23 income year starts on or after 1 July 2022—your 2022-23 income year; or

(ii) if your 2022-23 income year starts before 1 July 2022—your 2023-24 income year; and

ending at the end of 30 June 2023; and

(c) you can deduct the amount of the expenditure under a provision of a taxation law (other than section 328-455 of this Act) whether or not in, or wholly in, the income year in which the expenditure was incurred; and

(d) you incur the expenditure wholly or substantially for the purposes of your digital operations or digitising your operations; and

(e) the expenditure is not of a kind excluded by subsection (5); and

(f) if the expenditure is on a depreciating asset—the only balancing adjustment events that occur for the asset at a time during the period referred to in paragraph (b) when you hold the asset occur because you stop holding the asset because of an event or circumstance referred to in subsection 40-365(2) (about involuntary disposals) of the *Income Tax Assessment Act 1997*; and

(g) if:

(i) the expenditure is on a depreciating asset; and

(ii) the asset is not in-house software allocated to a software development pool for the income year in which you incur the expenditure;

you start to use the asset, or have it installed ready for use for a taxable purpose, before 1 July 2023.

Authorised Version C2023A00029

Businesses with turnover under $50 million

(3) An entity is covered by this subsection for an income year if:

(a) the entity is not a small business entity for the income year; and

(b) the entity would be a small business entity for the income year if:

(i) each reference in Subdivision 328-C of the *Income Tax Assessment Act 1997* (about what is a small business entity) to $10 million were instead a reference to $50 million; and

(ii) the reference in paragraph 328-110(5)(b) of that Act to a small business entity were instead a reference to an entity covered by this subsection.

Working out whether you can deduct an amount of expenditure on a depreciating asset

(4) For the purposes of paragraphs (1)(c) and (2)(c), in working out whether you can deduct an amount of expenditure on a depreciating asset, assume that:

(a) you will continue to hold the asset throughout its effective life; and

(b) throughout that effective life, you will use the asset for a taxable purpose to the same extent as you use it, or have it installed ready for use, for a taxable purpose in the income year in which you start to use it, or have it installed ready for use, for a taxable purpose.

Excluded expenditure

(5) The following kinds of expenditure are excluded by this subsection:

(a) salary or wage costs;

(b) capital works costs for which you can deduct an amount under Division 43 of the *Income Tax Assessment Act 1997*;

(c) financing costs, including interest, payments in the nature of interest and expenses of borrowing;

(d) training or education costs;

Authorised Version C2023A00029

(e) expenditure that you incur that forms part of, or is included in, the cost of your trading stock.

Note: For deductions relating to training or education costs, see section 328-445.

Authorised Version C2023A00029

Schedule 6—Financial reporting and auditing requirements for superannuation entities

Part 1—Amendment of the Corporations Act 2001

Corporations Act 2001

1 Section 9 (definition of *audit company*)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

2 Section 9 (definition of *audit-critical employee*)

After "a registered scheme,", insert "or a registrable superannuation entity,".

3 Section 9 (paragraph (a) of the definition of *audit-critical employee*)

Omit "or of the responsible entity for the registered scheme", substitute ", of the responsible entity for the registered scheme or of the RSE licensee for the registrable superannuation entity".

4 Section 9 (definition of *audited body*)

Omit "or registered scheme" (wherever occurring), substitute ", registered scheme or registrable superannuation entity".

5 Section 9 (definition of *audit firm*)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

6 Section 9

Insert:

> ***auditor for the purposes of the RSE licensee law*** means an auditor appointed in fulfilment of a requirement imposed by a provision of the RSE licensee law.

Authorised Version C2023A00029

7 Section 9 (definition of *consolidated entity*)

After "registered scheme", insert ", registrable superannuation entity".

8 Section 9 (note to the definition of *director*)

Omit "Note", substitute "Note 1".

9 Section 9 (at the end of the definition of *director*)

Add:

Note 2: For directors of registrable superannuation entities, see section 345AAC.

10 Section 9 (after paragraph (a) of the definition of *financial year*)

Insert:

(aa) for a registrable superannuation entity—the meaning given by section 323DAAA;

11 Section 9 (definition of *individual auditor*)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

12 Section 9

Insert:

officer of a registrable superannuation entity has the meaning given by section 345AAD.

13 Section 9 (definition of *play a significant role*)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

14 Section 9 (paragraph (a) of the definition of *play a significant role*)

Omit "or scheme" (wherever occurring), substitute ", scheme or entity".

15 Section 9 (subparagraph (a)(ii) of the definition of *play a significant role*)

Omit "or the scheme", substitute ", scheme or entity".

Authorised Version C2023A00029

16 Section 9 (paragraph (b) of the definition of *play a significant role*)

Omit "or scheme" (wherever occurring), substitute ", scheme or entity".

17 Section 9 (definition of *registrable superannuation entity*)

Repeal the definition, substitute:

registrable superannuation entity:

(a) when used in a provision outside Chapter 2M or an associated definition—has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; and

(b) when used in Chapter 2M or an associated definition—means a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), but does not include the following:

(i) an exempt public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(ii) an excluded approved deposit fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

(iii) a small APRA fund (within the meaning of section 1017BB).

For the purposes of this definition, each of the following is an ***associated definition***:

(a) the definition of ***audit company***;

(b) the definition of ***audit-critical employee***;

(c) the definition of ***audited body***;

(d) the definition of ***audit firm***;

(e) the definition of ***consolidated entity***;

(f) the definition of ***director***;

(g) the definition of ***financial year***;

(h) the definition of ***individual auditor***;

(i) the definition of ***officer of a registrable superannuation entity***;

(j) the definition of ***play a significant role***;

(k) the definition of ***RSE remuneration report***.

Authorised Version C2023A00029

18 Section 9

Insert:

RSE licensee law has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

RSE remuneration report means the section of the directors' report for a financial year for a registrable superannuation entity that is included under subsection 300C(1).

19 Subsection 285(1) (heading)

After "*registered schemes*", insert "*, registrable superannuation entities*".

20 Subsection 285(1)

After "registered schemes", insert ", registrable superannuation entities".

21 Subsection 285(1) (table heading)

After "**registered schemes**", insert "**, registrable superannuation entities**".

22 Subsection 285(1) (table item 2, column headed "comments")

After "(section 300A)", insert "and registrable superannuation entities (section 300C)".

23 Subsection 285(1) (table item 4, column headed "sections")

After "s. 314", insert ", 314AA".

24 Subsection 285(1) (table item 4, column headed "comments")

After "company limited by guarantee", insert "or a registrable superannuation entity".

Authorised Version C2023A00029

25 Subsection 285(1) (table item 4, column headed "comments")

Before "For deadline", insert "For registrable superannuation entities, see section 314AA.".

26 After subsection 285(3)

Insert:

Application to registrable superannuation entities

(3A) For the purposes of applying this Chapter to a registrable superannuation entity, the RSE licensee for the entity is responsible for the performance of obligations in respect of the entity (see section 345AAA).

27 Subsection 286(1)

After "registered scheme", insert ", registrable superannuation entity".

28 Subsection 289(1)

After "registered scheme", insert ", registrable superannuation entity".

29 Subsection 289(2)

After "registered scheme", insert ", registrable superannuation entity".

30 Subsection 289(3)

After "registered scheme", insert ", registrable superannuation entity".

31 Subsection 290(1)

After "registered scheme", insert ", registrable superannuation entity".

32 After paragraph 292(1)(d)

Insert:

; and (e) all registrable superannuation entities.

33 At the end of section 292

Add:

Authorised Version C2023A00029

Registrable superannuation entities

(4) The regulations may provide that a financial report prepared by a registrable superannuation entity must comply with prescribed requirements.

(5) The regulations may provide that a directors' report prepared by a registrable superannuation entity must comply with prescribed requirements.

34 Subsection 295(2)

After "registered scheme" (wherever occurring), insert ", registrable superannuation entity".

35 Paragraphs 295(4)(c) and (ca)

After "registered scheme", insert ", registrable superannuation entity".

36 Paragraph 297(a)

After "registered scheme", insert ", registrable superannuation entity".

37 Subsection 298(1)

After "registered scheme", insert ", registrable superannuation entity".

38 Paragraph 298(1AA)(b)

Omit "and 300A", substitute ", 300A and 300C".

39 Paragraph 299(2)(a)

After "registered scheme", insert ", registrable superannuation entity".

40 Subsection 299(3)

After "registered scheme" (wherever occurring), insert ", registrable superannuation entity".

41 Subsection 300(1)

After "year must", insert "(in the case of a company, registered scheme or disclosing entity)".

42 Paragraph 300(3)(b)

After "registered scheme", insert ", registrable superannuation entity".

Authorised Version C2023A00029

43 Subsection 300(11B)

After "registered scheme", insert ", registrable superannuation entity".

44 After section 300B

Insert:

300C Annual directors' report—registrable superannuation entities

Remuneration

(1) The directors' report for a financial year for a registrable superannuation entity must also include (in a separate and clearly identified section of the report):
  (a) the prescribed details in relation to the remuneration of each member of the key management personnel for the registrable superannuation entity; and
  (b) such other matters (if any) relating to such remuneration as are prescribed by the regulations.

(2) The material referred to in subsection (1) must be included in the directors' report under the heading "Remuneration report".

(3) Without limiting paragraph (1)(a), the regulations may:
  (a) provide that the value of an element of remuneration is to be determined, for the purposes of this section, in a particular way or by reference to a particular standard; and
  (b) provide that details to be given of an element of remuneration must relate to the remuneration provided in:
    (i) the financial year to which the directors' report relates; and
    (ii) the earlier financial years specified in the regulations.

Non-audit services and auditor independence

(4) The directors' report for a registrable superannuation entity for a financial year must also include the following in relation to each auditor:
  (a) details of the amounts paid or payable to the auditor for non-audit services provided, during the year, by the auditor (or by another person or firm on the auditor's behalf);

Authorised Version C2023A00029

(b) a statement whether the directors are satisfied that the provision of non-audit services, during the year, by the auditor (or by another person or firm on the auditor's behalf) is compatible with the general standard of independence for auditors imposed by this Act;

(c) a statement of the directors' reasons for being satisfied that the provision of those non-audit services, during the year, by the auditor (or by another person or firm on the auditor's behalf) did not compromise the auditor independence requirements of this Act.

(5) The details and statements mentioned in subsection (4) must be included in the directors' report under the heading "Non-audit services".

(6) For the purposes of paragraph (4)(a), the details of amounts paid or payable to an auditor for non-audit services provided, during the year, by the auditor (or by another person or firm on the auditor's behalf) are:

(a) the name of the auditor; and

(b) the dollar amount that:

(i) the registrable superannuation entity; or

(ii) the RSE licensee for the registrable superannuation entity;

paid, or is liable to pay, for each of those non-audit services.

(7) The statements under paragraphs (4)(b) and (c) must be made in accordance with advice provided by the registrable superannuation entity's audit committee.

(8) For the purposes of subsection (7), a statement is taken to be made in accordance with advice provided by the registrable superannuation entity's audit committee only if:

(a) the statement is consistent with that advice and does not contain any material omission of material included in that advice; and

(b) the advice is endorsed by a resolution passed by the members of the audit committee; and

Authorised Version C2023A00029

(c) the advice is written advice signed by a member of the audit committee on behalf of the audit committee and given to the directors.

Audit

(9) If an individual plays a significant role in the audit of a registrable superannuation entity for a financial year in reliance on an approval granted under section 324DAA, the directors' report for the entity for the financial year must also include details of, and reasons for, the approval.

(10) If a registered company auditor plays a significant role in the audit of a registrable superannuation entity for a financial year in reliance on a declaration made under section 342A, the directors' report for the entity for the financial year must also include details of the declaration.

45 Subsection 301(1)

After "registered scheme", insert ", registrable superannuation entity".

46 At the end of section 301

Add:

Registrable superannuation entities

(6) The following reports relating to:
(a) a registrable superannuation entity; and
(b) a financial year;
may be set out in the same document:
(c) an auditor's report obtained by the entity under subsection (1);
(d) an auditor's report provided in relation to the entity under a provision of the RSE licensee law.

47 Paragraphs 307(c) and (d)

After "registered scheme", insert ", registrable superannuation entity".

48 Subsections 307C(1) and (3)

After "registered scheme", insert ", registrable superannuation entity".

Authorised Version C2023A00029

49 Subparagraph 307C(5)(a)(i)

After "registered scheme", insert ", registrable superannuation entity".

50 Paragraph 307C(5A)(a)

After "registered scheme", insert ", registrable superannuation entity".

51 After subsection 308(3C)

Insert:

(3D) If the directors' report for the financial year includes an RSE remuneration report, the auditor must also report to members on whether the auditor is of the opinion that the remuneration report complies with section 300C. If not of that opinion, the auditor's report must say why.

52 Subsection 308(5)

After "(3C)", insert ", (3D)".

53 Section 310

Before "The auditor", insert "(1)".

54 Section 310

Omit "A request", substitute "A requirement".

55 At the end of section 310

Add:

(2) The auditor:

(a) has a right of access at all reasonable times to the books of a registrable superannuation entity; and

(b) may, by written notice, require an officer of a registrable superannuation entity to:

(i) give the auditor information, explanations or other assistance for the purposes of the audit or review; and

(ii) do so within 14 days after the notice is given.

A requirement under paragraph (b) must be a reasonable one.

Authorised Version C2023A00029

56 Subsection 311(1)

After "an audit", insert "(other than an audit of a registrable superannuation entity)".

57 After subsection 311(1)

Insert:

(1A) An individual auditor conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the auditor suspects on reasonable grounds that there are circumstances that amount to a contravention of this Act; and

(b) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor forms that suspicion.

(1B) An individual auditor commits an offence if the auditor contravenes subsection (1A).

(1C) An individual auditor commits an offence of strict liability if the auditor contravenes subsection (1A).

58 Subsection 311(2)

After "conducting an audit", insert "(other than an audit of a registrable superannuation entity)".

59 After subsection 311(2)

Insert:

(2A) An audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit suspects on reasonable grounds that there are circumstances that amount to a contravention of this Act; and

(b) the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor forms that suspicion.

(2B) An audit company commits an offence if the company contravenes subsection (2A).

Authorised Version C2023A00029

(2C) An audit company commits an offence of strict liability if the company contravenes subsection (2A).

Contravention by member of audit firm

(2D) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm is conducting an audit of a registrable superannuation entity; and

(b) the defendant is a member of the firm; and

(c) the lead auditor for the audit suspects on reasonable grounds that there are circumstances that amount to a contravention of this Act; and

(d) the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor forms that suspicion.

(2E) A person commits an offence if the person contravenes subsection (2D).

(2F) A person commits an offence of strict liability if the person contravenes subsection (2D).

(2G) A member of an audit firm does not commit an offence at a particular time because of a contravention of subsection (2D) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2D); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

60 Paragraph 311(3)(a)

After "an audit", insert "(other than an audit of a registrable superannuation entity)".

61 After subsection 311(3)

Insert:

Authorised Version C2023A00029

(3A) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(b) the person suspects on reasonable grounds that there are circumstances that amount to a contravention of this Act; and

(c) the person does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person forms that suspicion.

(3B) A person commits an offence if the person contravenes subsection (3A).

(3C) A person commits an offence of strict liability if the person contravenes subsection (3A).

62 Paragraph 312(1)(b)

Omit "section 310", substitute "subsection 310(1)".

63 At the end of section 312

Add:

(3) An officer of a registrable superannuation entity must:

(a) allow the auditor access to the books of the entity; and

(b) give the auditor any information, explanation or assistance required under subsection 310(2).

Note: Books include registers and documents generally (not only the accounting "books"): see the definition of ***books*** in section 9.

(4) An offence based on subsection (3) is an offence of strict liability.

64 After section 314

Insert:

314AA Annual financial reporting by registrable superannuation entities to members

(1) A registrable superannuation entity must report to members for a financial year by providing all of the following reports:

(a) the financial report for the year;

Authorised Version C2023A00029

(b) the directors' report for the year (see sections 298, 299 and 300C);
(c) the auditor's report on the financial report.

(2) A registrable superannuation entity must provide the reports for a financial year by making a copy of the reports publicly available on the entity's website on and after the day on which the reports are lodged with ASIC under section 319.

(3) An offence based on subsection (1) is an offence of strict liability.

65 After subsection 315(3)

Insert:

Registrable superannuation entities

(3AA) A registrable superannuation entity must report to members under section 314AA within 3 months after the end of the financial year.

66 Subsection 319(1)

After "registered scheme", insert ", registrable superannuation entity".

67 Subsection 319(1)

Omit "This", substitute "In the case of a company, registered scheme or disclosing entity, this".

68 Paragraph 319(3)(a)

After "registered scheme", insert ", registrable superannuation entity".

69 At the end of section 319

Add:

Registrable superannuation entities

(4) The regulations may require that the lodgment of a report by a registrable superannuation entity under subsection (1) must be in a prescribed manner.

(5) A manner prescribed for the purposes of subsection (4) may involve electronic communication.

Authorised Version C2023A00029

(6) Subsection (5) does not limit subsection (4).

(7) Section 352 does not apply to the lodgment of a report if regulations are in force under subsection (4) of this section in relation to the lodgment of the report.

70 Subsection 321(1)

After "registered scheme", insert ", registrable superannuation entity".

71 After subsection 322(2)

Insert:

Financial reports and directors' reports lodged by registrable superannuation entities

(2A) If:

(a) a financial report or directors' report for a financial year relates to a registrable superannuation entity; and

(b) the report is amended after it is lodged with ASIC;

the entity must, within 14 days after the amendment:

(c) lodge the amended report with ASIC; and

(d) make both of the following publicly available on the entity's website on and after the day on which the amended report is lodged with ASIC under paragraph (c):

(i) a copy of the amended report;

(ii) a description of the nature of the amendment.

72 Subsection 322(3)

Omit "or (2)", substitute ", (2) or (2A)".

73 Subsection 323(1)

After "registered scheme" (wherever occurring), insert ", registrable superannuation entity".

74 Subsection 323A(2)

After "registered scheme", insert ", registrable superannuation entity".

75 Subsection 323B(1)

After "registered scheme", insert ", registrable superannuation entity".

Authorised Version C2023A00029

76 Section 323C

After "registered scheme", insert ", registrable superannuation entity".

77 After section 323D

Insert:

323DAAA Financial years for registrable superannuation entities

(1) The financial year for a registrable superannuation entity is the entity's year of income (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

Synchronisation of financial years where consolidated financial statements are required

(2) A registrable superannuation entity that has to prepare consolidated financial statements must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years. It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.

(3) An offence based on subsection (2) is an offence of strict liability.

(4) To facilitate this synchronisation, the financial year for a controlled entity may be extended or shortened. The extended financial year cannot be longer than 18 months.

78 Division 1 of Part 2M.4 (heading)

Omit "**or registered scheme**", substitute "**, registered scheme or registrable superannuation entity**".

79 Section 324AA

Before "Subject to this Part", insert "(1)".

80 At the end of section 324AA

Add:

(2) Subject to this Part, the following may be appointed as auditor for a registrable superannuation entity for the purposes of this Chapter:

Authorised Version C2023A00029

(a) an individual;
(b) a firm;
(c) a company.

The entity may only have one auditor.

Note: In addition to audit requirements under this Chapter, a registrable superannuation entity has audit requirements under the RSE licensee law. Subsection 35AC(8) of the *Superannuation Industry (Supervision) Act 1993* provides that the RSE licensee for a registrable superannuation entity must ensure that the auditor of the entity for the purposes of the RSE licensee law is the individual, firm or company that is the auditor of the entity for the purposes of this Chapter.

81 Subsections 324AB(1) and (2)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

82 Subsection 324AB(2)

Omit "or scheme", substitute ", scheme or entity".

83 Subsection 324AB(3)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

84 Paragraph 324AC(1)(a)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

85 Subsections 324AC(4) and (5)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

86 Subsection 324AD(1)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

87 Section 324AE

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

Authorised Version C2023A00029

88 Subsections 324AF(1) and (2)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

89 Subparagraphs 324BA(a)(i), (ii) and (iii)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

90 Subparagraphs 324BB(1)(a)(i), (ii) and (iii)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

91 Subparagraphs 324BB(2)(a)(i), (ii) and (iii)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

92 Subparagraphs 324BC(1)(a)(i), (ii) and (iii)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

93 Subparagraphs 324BC(2)(a)(i), (ii) and (iii)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

94 Subparagraphs 324BC(3)(a)(i), (ii) and (iii)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

95 After Division 2 of Part 2M.4

Insert:

Division 2A—Eligibility requirements for auditors of registrable superannuation entities

324BF Eligibility requirements for auditors of registrable superannuation entities

(1) An individual contravenes this section if:

Authorised Version C2023A00029

(a) the individual:
(i) consents to be appointed as auditor of a registrable superannuation entity for the purposes of this Chapter; or
(ii) acts as auditor of a registrable superannuation entity for the purposes of this Chapter; or
(iii) prepares a report required by this Act to be prepared by an auditor of a registrable superannuation entity; and
(b) the person:
(i) does not meet the eligibility criteria for auditors of registrable superannuation entities (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) set out in the prudential standards (within the meaning of that Act); or
(ii) has been disqualified from being, or acting as, an auditor of a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) under section 130D of that Act; or
(iii) is a member or employee of a firm that is disqualified under section 130EA of the *Superannuation Industry (Supervision) Act 1993*; or
(iv) is a director or employee of a company that is disqualified under section 130EA of the *Superannuation Industry (Supervision) Act 1993*.

(2) A company contravenes this section if:
(a) the company:
(i) consents to be appointed as auditor of a registrable superannuation entity for the purposes of this Chapter; or
(ii) acts as auditor of a registrable superannuation entity for the purposes of this Chapter; or
(iii) prepares a report required by this Act to be prepared by an auditor of a registrable superannuation entity; and
(b) the company is disqualified under section 130EA of the *Superannuation Industry (Supervision) Act 1993*.

(3) A member of a firm contravenes this section if:
(a) the firm:

Authorised Version C2023A00029

(i) consents to be appointed as auditor of a registrable superannuation entity for the purposes of this Chapter; or

(ii) acts as auditor of a registrable superannuation entity for the purposes of this Chapter; or

(iii) prepares a report required by this Act to be prepared by an auditor of a registrable superannuation entity; and

(b) the firm is disqualified under section 130EA of the *Superannuation Industry (Supervision) Act 1993*.

(4) A company contravenes this section if:

(a) the company:

(i) consents to be appointed as auditor of a registrable superannuation entity for the purposes of this Chapter; or

(ii) acts as auditor of a registrable superannuation entity for the purposes of this Chapter; or

(iii) prepares a report required by this Act to be prepared by an auditor of a registrable superannuation entity; and

(b) the lead auditor for an audit of a registrable superannuation entity conducted by the company:

(i) does not meet the eligibility criteria for auditors of registrable superannuation entities (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) set out in the prudential standards (within the meaning of that Act); or

(ii) has been disqualified from being, or acting as, an auditor of a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) under section 130D of that Act.

(5) A member of a firm contravenes this section if:

(a) the firm:

(i) consents to be appointed as auditor of a registrable superannuation entity for the purposes of this Chapter; or

(ii) acts as auditor of a registrable superannuation entity for the purposes of this Chapter; or

Authorised Version C2023A00029

(iii) prepares a report required by this Act to be prepared by an auditor of a registrable superannuation entity; and

(b) the lead auditor for an audit of a registrable superannuation entity conducted by the firm:

(i) does not meet the eligibility criteria for auditors of registrable superannuation entities (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) set out in the prudential standards (within the meaning of that Act); or

(ii) has been disqualified from being, or acting as, an auditor of a registrable superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) under section 130D of that Act.

96 Subsection 324CA(1A) (note 2)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

97 Subsection 324CA(1A) (at the end of note 2)

Add:

; or (d) subsection 331AH(3) or (5) (registrable superannuation entity).

98 Subsection 324CB(1A) (note 2)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

99 Subsection 324CB(1A) (at the end of note 2)

Add:

; or (d) subsection 331AH(4) (registrable superannuation entity).

100 Subsection 324CC(1A) (note 2)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

101 Subsection 324CC(1A) (at the end of note 2)

Add:

; or (d) subsection 331AH(5) (registrable superannuation entity).

Authorised Version C2023A00029

102 Subsection 324CD(2) (at the end of the table)

Add:

4	a registrable superannuation entity	the RSE licensee for the registrable superannuation entity, if the RSE licensee is a body corporate or a constitutional corporation (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or a current or former director of the registrable superannuation entity; or a person currently or formerly involved in the management of the registrable superannuation entity; or a person currently or formerly involved in the management of the RSE licensee for the registrable superannuation entity; or a connected entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the RSE licensee for the registrable superannuation entity.

103 Subsection 324CE(1A) (note)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

104 Subsection 324CE(1A) (at the end of the note)

Add:

; or (d) subsection 331AH(3) (registrable superannuation entity).

105 After subsection 324CE(6)

Insert:

Authorised Version C2023A00029

(6A) Paragraphs (6)(a) and (b) do not apply if:

(a) the audited body is a registrable superannuation entity; and

(b) the services are required or permitted to be provided under the prudential standards (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

106 Subsection 324CF(1A) (note)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

107 Subsection 324CF(1A) (at the end of the note)

Add:

; or (d) subsection 331AH(4) (registrable superannuation entity).

108 After subsection 324CF(6)

Insert:

(6A) Paragraphs (6)(a) and (b) do not apply if:

(a) the audited body is a registrable superannuation entity; and

(b) the services are required or permitted to be provided under the prudential standards (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

109 Subsection 324CG(1A) (note)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

110 Subsection 324CG(1A) (at the end of the note)

Add:

; or (d) subsection 331AH(3) (registrable superannuation entity).

111 Subsection 324CG(5A) (note)

Omit "or a registered scheme", substitute ", a registered scheme or a registrable superannuation entity".

112 Subsection 324CG(5A) (at the end of the note)

Add:

; or (d) subsection 331AH(3) (registrable superannuation entity).

Authorised Version C2023A00029

113 After subsection 324CG(10)

Insert:

(10A) Paragraphs (10)(a) and (b) do not apply if:

(a) the audited body is a registrable superannuation entity; and

(b) the services are required or permitted to be provided under the prudential standards (within the meaning of the *Superannuation Industry (Supervision) Act 1993*).

114 After subsection 324CH(2)

Insert:

Applying table if audited body is registrable superannuation entity

(2A) If the audited body is a registrable superannuation entity, apply the table in subsection (1) as if:

(a) references to the audited body in items 1 to 9, and items 15 to 19, in the table were references to the RSE licensee for the registrable superannuation entity; and

(b) references to an interest in the audited body in items 10 to 12 in the table were references to an interest in either:

(i) the registrable superannuation entity; or

(ii) the RSE licensee for the registrable superannuation entity; and

(c) references to an investment in an entity that has a controlling interest in the audited body in items 13 and 14 in the table were references to an investment in an entity that has a controlling interest in the RSE licensee for the registrable superannuation entity.

115 At the end of Subdivision C of Division 3 of Part 2M.4

Add:

324CLA Extended meaning of officer of a registrable superannuation entity

(1) For the purposes of this Division, a person is taken to be an officer of a registrable superannuation entity if:

(a) the person is an officer of:

Authorised Version C2023A00029

(i) a related body corporate of the RSE licensee for the registrable superannuation entity; or

(ii) an entity that the RSE licensee for the registrable superannuation entity controls; or

(b) the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of:

(i) a related body corporate of the RSE licensee for the registrable superannuation entity; or

(ii) an entity that the RSE licensee for the registrable superannuation entity controlled at that time.

Note: ***Officer*** of a registrable superannuation entity is defined in section 345AAD. This subsection extends the meaning of that expression for the purposes of this Division.

(2) Paragraph (1)(b) does not apply if ASIC directs that it does not apply in relation to the person in relation to the RSE licensee for the registrable superannuation entity. ASIC may give the direction only if ASIC thinks that it is appropriate to do so in the circumstances of the case.

116 Paragraph 324CM(1)(a)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

117 Paragraph 324CM(1)(c)

Omit "or scheme", substitute ", scheme or entity".

118 Paragraph 324CM(2)(a)

Omit "or a registered scheme", substitute ", registered scheme or registrable superannuation entity".

119 Paragraph 324CM(2)(c)

Omit "or scheme", substitute ", scheme or entity".

120 Paragraph 324CM(3)(d)

Omit "or a registered scheme", substitute ", registered scheme or registrable superannuation entity".

Authorised Version C2023A00029

121 Paragraph 324CM(3)(f)

Omit "or scheme", substitute ", scheme or entity".

122 Division 5 of Part 2M.4 (at the end of the heading)

Add "**, listed registered schemes and registrable superannuation entities**".

123 Section 324DA (heading)

Omit "**or listed registered scheme**", substitute "**, listed registered scheme or registrable superannuation entity**".

124 Subsection 324DA(1)

Omit "or listed registered scheme", substitute ", listed registered scheme or registrable superannuation entity".

125 Subsection 324DA(1)

Omit "or the scheme" (wherever occurring), substitute ", the scheme or the entity".

126 Subsection 324DA(2)

Omit "or listed registered scheme", substitute ", listed registered scheme or registrable superannuation entity".

127 Subsection 324DA(2)

Omit "or scheme", substitute ", the scheme or the entity".

128 Subsection 324DA(3)

Omit "or scheme" (wherever occurring), substitute ", scheme or entity".

129 Subsection 324DAA(1)

Omit "or of a listed registered scheme", substitute "or of a listed registered scheme or registrable superannuation entity".

130 Subsection 324DAA(1)

Omit "or scheme", substitute ", scheme or entity".

131 Subsection 324DAA(3)

Omit "or scheme", substitute ", scheme or entity".

Authorised Version C2023A00029

132 Subsection 324DAA(5)

Omit "or scheme", substitute ", scheme or entity".

133 Subsection 324DAB(1) (heading)

Omit "*or scheme*", substitute "*, scheme or entity*".

134 Subsection 324DAB(1)

Omit "or the responsible entity of a listed registered scheme", substitute "the responsible entity of a listed registered scheme, or the RSE licensee for a registrable superannuation entity".

135 Paragraph 324DAB(2)(c)

Omit "or scheme", substitute ", scheme or entity".

136 Subparagraph 324DAB(2)(d)(i)

Omit "or scheme", substitute ", scheme or entity".

137 Subsection 324DAB(4)

Omit "or of a listed registered scheme", substitute "of a listed registered scheme or of a registrable superannuation entity".

138 Section 324DAC

Omit "or of a listed registered scheme", substitute "of a listed registered scheme or of a registrable superannuation entity".

139 After paragraph 324DAC(a)

Insert:

(aa) if the approval was granted by the directors of a registrable superannuation entity—give a copy of the resolution to APRA; and

140 Section 324DAC (note)

After "300", insert "or 300C".

141 Paragraph 324DB(a)

Omit "or listed registered scheme", substitute ", listed registered scheme or registrable superannuation entity".

Authorised Version C2023A00029

142 Paragraph 324DC(1)(a)

Omit "or listed registered scheme's auditor", substitute ", listed registered scheme's auditor or registrable superannuation entity's auditor".

143 Paragraph 324DC(1)(b)

Omit "or scheme's", substitute ", scheme's or entity's".

144 Paragraph 324DC(1)(c)

Omit "or scheme", substitute ", scheme or entity".

145 Subparagraphs 324DC(1)(f)(i) and (ii)

Omit "or scheme", substitute ", scheme or entity".

146 Paragraph 324DC(2)(a)

Omit "or listed registered scheme's auditor", substitute ", listed registered scheme's auditor or registrable superannuation entity's auditor".

147 Paragraph 324DC(2)(b)

Omit "or scheme's", substitute ", scheme's or entity's".

148 Paragraph 324DC(2)(c)

Omit "or scheme", substitute ", scheme or entity".

149 Paragraph 324DD(1)(a)

Omit "or listed registered scheme's auditor", substitute ", listed registered scheme's auditor or registrable superannuation entity's auditor".

150 Paragraph 324DD(1)(b)

Omit "or scheme's", substitute ", scheme's or entity's".

151 Paragraph 324DD(1)(c)

Omit "or scheme", substitute ", scheme or entity".

152 Subparagraphs 324DD(1)(e)(i) and (ii)

Omit "or scheme", substitute ", scheme or entity".

Authorised Version C2023A00029

153 Paragraph 324DD(2)(a)

Omit "or listed registered scheme's auditor", substitute ", listed registered scheme's auditor or registrable superannuation entity's auditor".

154 Paragraph 324DD(2)(b)

Omit "or scheme's", substitute ", scheme's or entity's".

155 Paragraph 324DD(2)(c)

Omit "or scheme", substitute ", scheme or entity".

156 Subparagraphs 324DD(2)(f)(i) and (ii)

Omit "or scheme", substitute ", scheme or entity".

157 Paragraph 324DD(3)(a)

Omit "or listed registered scheme's auditor", substitute ", listed registered scheme's auditor or registrable superannuation entity's auditor".

158 Paragraph 324DD(3)(b)

Omit "or scheme's", substitute ", scheme's or entity's".

159 Paragraph 324DD(3)(c)

Omit "or scheme", substitute ", scheme or entity".

160 At the end of Part 2M.4

Add:

Authorised Version C2023A00029

Division 8—Appointment, removal and fees of auditors of registrable superannuation entities

Subdivision A—Appointment of registrable superannuation entity auditors

331AF Registrable superannuation entity auditor (initial appointment of auditor)

(1) If a registrable superannuation entity is registered under section 29M of the *Superannuation Industry (Supervision) Act 1993* after the commencement of this section, the RSE licensee must appoint an auditor of the entity for the purposes of this Chapter within 1 month after the day on which the entity is registered under that section.

(2) If:

(a) a registrable superannuation entity was registered under section 29M of the *Superannuation Industry (Supervision) Act 1993* immediately before the commencement of this section; and

(b) immediately before the commencement of this section, an individual held an appointment as an auditor of the entity for the purposes of the RSE licensee law;

then:

(c) the RSE licensee is taken to have appointed the individual as an auditor of the entity for the purposes of this Chapter; and

(d) that appointment takes effect at the commencement of this section.

(3) A director of the registrable superannuation entity must take all reasonable steps to secure compliance with subsection (1).

331AG Registrable superannuation entity auditor (appointment to fill vacancy)

(1) If a vacancy occurs in the office of auditor of a registrable superannuation entity, the RSE licensee for the entity must, within 1 month after the vacancy occurs, appoint an auditor to fill the vacancy.

Authorised Version C2023A00029

(2) A director of the registrable superannuation entity must take all reasonable steps to secure compliance with subsection (1).

331AH Registrable superannuation entity auditor (duration of appointment)

(1) An auditor of a registrable superannuation entity holds office until the auditor:
  (a) dies; or
  (b) is removed, or resigns, from office in accordance with section 331AK; or
  (c) ceases to be capable of acting as an auditor because of Division 2, 2A or 5 of this Part; or
  (d) ceases to be auditor under subsection (2), (3), (4) or (5).

(2) An auditor ceases to be the auditor of a registrable superannuation entity for the purposes of this Chapter if the auditor ceases to be the auditor of the entity for the purposes of the RSE licensee law.

(3) An individual auditor ceases to be the auditor of a registrable superannuation entity for the purposes of this Chapter if:
  (a) on a particular day (the ***start day***), the individual auditor:
    (i) informs ASIC of a conflict of interest situation in relation to the entity under subsection 324CA(1A); or
    (ii) informs ASIC of particular circumstances in relation to the entity under subsection 324CE(1A); and
  (b) the individual auditor does not give ASIC a notice, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days, or such longer period as ASIC approves in writing, from the start day.

(4) An audit firm ceases to be auditor of a registrable superannuation entity under this subsection if:
  (a) on a particular day (the ***start day***), ASIC is:
    (i) informed of a conflict of interest situation in relation to the entity under subsection 324CB(1A); or
    (ii) informed of particular circumstances in relation to the entity under subsection 324CF(1A); and

Authorised Version C2023A00029

(b) ASIC has not been given a notice on behalf of the audit firm, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days, or such longer period as ASIC approves in writing, from the start day.

(5) An audit company ceases to be auditor of a registrable superannuation entity under this subsection if:

(a) on a particular day (the ***start day***), ASIC is:

(i) informed of a conflict of interest situation in relation to the entity under subsection 324CB(1A) or 324CC(1A); or

(ii) informed of particular circumstances in relation to the entity under subsection 324CF(1A) or 324CG(1A) or (5A); and

(b) ASIC has not been given a notice on behalf of the audit company, before the notification day (see subsection (6)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days, or such longer period as ASIC approves in writing, from the start day.

(6) The ***notification day*** is:

(a) the last day of the remedial period; or

(b) such later day as ASIC approves in writing (whether before or after the remedial period ends).

(7) If an audit firm ceases to be the auditor of a registrable superannuation entity under subsection (1) at a particular time, each member of the firm who:

(a) is taken to have been appointed as an auditor of the entity under subsection 324AB(1) or 324AC(4); and

(b) is an auditor of the entity immediately before that time;

ceases to be an auditor of the entity at that time.

Authorised Version C2023A00029

331AJ ASIC's power to appoint auditor of a registrable superannuation entity

(1) ASIC may appoint an auditor of a registrable superannuation entity for the purposes of this Chapter if:
  (a) the RSE licensee for the entity does not appoint an auditor when required by this Act to do so; and
  (b) a member of the entity applies to ASIC in writing for the appointment of an auditor under this section.

(2) ASIC may only appoint an individual, firm or company as auditor under subsection (1) if the individual, firm or company consents to being appointed.

(3) If ASIC appoints an individual, firm or company as auditor under subsection (1), ASIC must:
  (a) notify APRA of the appointment; and
  (b) do so as soon as practicable after making the appointment.

Subdivision B—Removal and resignation of registrable superannuation entity auditors

331AK Removal and resignation of auditors

(1) The RSE licensee for a registrable superannuation entity may, with ASIC's consent, remove the auditor of the entity from office.

(2) An auditor of a registrable superannuation entity may, by notice in writing given to the RSE licensee for the entity, resign as auditor of the entity if:
  (a) the auditor:
    (i) has, by notice in writing given to ASIC, applied for consent to the resignation and stated the reasons for the application; and
    (ii) has, at or about the same time as giving the notice to ASIC, given the registrable superannuation entity notice in writing of the application to ASIC; and
  (b) ASIC has given its consent.

(3) As soon as practicable after ASIC receives a notice from an auditor under subsection (2), ASIC must notify the auditor, and the

Authorised Version C2023A00029

registrable superannuation entity, whether it consents to the resignation.

(4) A statement made by an auditor in an application to ASIC under subsection (2) or in answer to an inquiry by ASIC relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) must not be made the ground of a prosecution, action or suit against the auditor.

A certificate by ASIC that the statement was made in the application or in answer to the inquiry by ASIC is prima facie evidence that the statement was so made.

(5) The resignation of an auditor takes effect:

(a) on the day (if any) specified for the purpose in the notice of resignation; or

(b) on the day on which ASIC gives its consent to the resignation; or

(c) on the day (if any) fixed by ASIC for the purpose;

whichever occurs last.

(6) If, on the retirement or withdrawal of a member of a firm, the firm will no longer be capable of acting as auditor of a registrable superannuation entity because of subparagraph 324BB(1)(b)(i) or (2)(b)(i), the member is (if not disqualified from acting as auditor of the entity) taken to be the auditor of the entity until the member obtains the consent of ASIC to the member's retirement or withdrawal.

(7) Within 14 days after:

(a) the removal from office of an auditor of a registrable superannuation entity; or

(b) the receipt of a notice of resignation from an auditor of a registrable superannuation entity;

the entity must lodge with ASIC a notice of the removal or resignation in the prescribed form.

(8) If ASIC consents to the removal or the resignation of an auditor of a registrable superannuation entity, ASIC must:

Authorised Version C2023A00029

(a) notify APRA of the consent; and
(b) do so as soon as practicable after giving the consent.

Subdivision C—Fees and expenses of auditors

331AL Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a registrable superannuation entity are payable by the RSE licensee for the entity.

161 After paragraph 332A(1)(b)

Insert:

(ba) registrable superannuation entities;

162 Subsection 334(5)

After "registered scheme", insert ", registrable superannuation entity".

163 Section 340 (heading)

After "**registered schemes**", insert "**, registrable superannuation entities**".

164 Subsection 340(1)

After "registered scheme", insert ", registrable superannuation entity".

165 Section 341 (heading)

After "**registered schemes**", insert "**, registrable superannuation entities**".

166 Subsection 341(1)

After "registered schemes" (wherever occurring), insert ", registrable superannuation entities".

167 Section 342 (heading)

After "**registered schemes,**", insert "**registrable superannuation entities,**".

Authorised Version C2023A00029

168 After subsection 342A(5)

Insert:

(5A) Before making a declaration in relation to the audit of a registrable superannuation entity or a class of registrable superannuation entities, ASIC must consult APRA.

169 At the end of section 342A

Add:

(9) If ASIC makes a declaration in relation to the audit of a registrable superannuation entity or a class of registrable superannuation entities, ASIC must:
(a) notify APRA of the declaration; and
(b) do so as soon as practicable after making the declaration.

170 Section 342B (heading)

Omit "**or registered scheme**", substitute "**, registered scheme or registrable superannuation entity**".

171 Subsection 342B(1)

Repeal the subsection, substitute:

(1) If a registered company auditor plays a significant role in the audit of a company, registered scheme or registrable superannuation entity in reliance on a declaration by ASIC under section 342A, the auditor must give:
(a) the company; or
(b) the responsible entity for the registered scheme; or
(c) the registrable superannuation entity;
written notice of the declaration.

172 Paragraph 342B(2)(b)

Omit "or registered scheme", substitute ", registered scheme or registrable superannuation entity".

173 Subsection 344(1)

After "registered scheme", insert ", registrable superannuation entity".

Authorised Version C2023A00029

174 At the end of Chapter 2M

Add:

Part 2M.8—Additional provisions relating to registrable superannuation entities

345AAA Obligations of registrable superannuation entities

An obligation imposed on a registrable superannuation entity by a provision of this Chapter is to be discharged by the RSE licensee for the entity.

345AAB Notices etc. given to RSE licensees

For the purposes of this Chapter, if a notice, direction or other document is given to the RSE licensee for a registrable superannuation entity, the notice, direction or other document is taken to be given to the entity.

345AAC Directors of registrable superannuation entities

(1) For the purposes of this Chapter, ***director*** of a registrable superannuation entity means:

(a) if the RSE licensee for the entity is a constitutional corporation or a body corporate—a director of the constitutional corporation or body corporate; or

(b) if the RSE licensee for the entity is a group of individual trustees—each of those trustees.

(2) For the purposes of this section, ***constitutional corporation*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

345AAD Officers of registrable superannuation entities

(1) For the purposes of this Chapter, ***officer*** of a registrable superannuation entity means:

Authorised Version C2023A00029

(a) if the RSE licensee for the entity is a constitutional corporation or a body corporate—an officer of the constitutional corporation or body corporate; or

(b) if the RSE licensee for the entity is a group of individual trustees:

(i) each of those trustees; or

(ii) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or

(iii) a person who has the capacity to affect significantly the entity's financial standing.

(2) For the purposes of this section, ***constitutional corporation*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

175 After subsection 1017C(3)

Insert:

Reports prepared by a registrable superannuation entity etc.

(3AA) If the financial product is a superannuation product that relates to a registrable superannuation entity (within the meaning of Chapter 2M), the issuer must, on request in writing by a person who is a concerned person, give the person:

(a) a copy of the financial report of the entity for a specified financial year; and

(b) a copy of the directors' report of the entity for a specified financial year; and

(c) a copy of the auditor's report on that financial report.

Each copy must be given in accordance with the other requirements of this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

176 In the appropriate position in Chapter 10

Insert:

Authorised Version C2023A00029

Part 10.58—Application and transitional provisions relating to Schedule 6 to the Treasury Laws Amendment (2022 Measures No. 4) Act 2023

1684 Financial reporting and auditing requirements for registrable superannuation entities

The amendments of this Act made by Part 1 of Schedule 6 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* so far as they relate to:

(a) a financial report for a financial year; or

(b) a directors' report for a financial year; or

(c) an audit of a financial report for a financial year;

apply in relation to the report or audit if the financial year begins on or after 1 July 2023.

177 Schedule 3 (table item dealing with Subsections 308(1), (2), (3), (3AA), (3AB), (3A), (3C) and (4), column headed "Provision")

After "(3C)" insert ", (3D)".

178 Schedule 3 (after the table item dealing with Subsections 311(1), (2) and (3))

Insert:

Subsection 311(2B)	250 penalty units
Subsection 311(2C)	125 penalty units
Subsections 311(1B), (2E) and (3B)	50 penalty units
Subsections 311(1C), (2F) and (3C)	25 penalty units

179 Schedule 3 (table item dealing with Subsection 312(1), column headed "Provision")

Omit "Subsection 312(1)", substitute "Subsections 312(1) and (3)".

Authorised Version C2023A00029

180 In the appropriate position in Schedule 3

Insert:

Subsection 314AA(1)	30 penalty units

181 Schedule 3 (table item dealing with Subsections 322(1), (1A) and (2), column headed "Provision")

Omit "and (2)", substitute "(2) and (2A)".

182 In the appropriate position in Schedule 3

Insert:

Subsection 323DAAA(2)	30 penalty units

183 In the appropriate position in Schedule 3

Insert:

Subsections 324BF(2) and (4)	300 penalty units
Subsections 324BF(1), (3) and (5)	6 months imprisonment

184 In the appropriate position in Schedule 3

Insert:

Subsections 331AF(1) and (3)	6 months imprisonment
Subsections 331AG(1) and (2)	6 months imprisonment

185 In the appropriate position in Schedule 3

Insert:

Subsection 1017C(3AA)	2 years imprisonment

Authorised Version C2023A00029

Part 2—Amendments of other Acts

Australian Securities and Investments Commission Act 2001

186 Subparagraph 127(2D)(b)(i)

After "registered scheme", insert ", registrable superannuation entity".

187 Paragraph 127(2D)(c)

After "registered scheme", insert ", to the RSE licensee for the registrable superannuation entity".

188 Subsection 127(2D)

After "responsible entity" (last occurring), insert ", RSE licensee".

189 Subsection 127(2F)

After "registered scheme", insert ", registrable superannuation entity".

190 Subsection 127(2G)

After "responsible entity" (wherever occurring), insert ", RSE licensee".

191 Subsection 127(9)

Insert:

registrable superannuation entity has the same meaning as in Chapter 2M of the *Corporations Act 2001*.

RSE licensee has the same meaning as in the SIS Act.

Superannuation Industry (Supervision) Act 1993

192 Subsection 6(1) (table item 40, column headed "Provisions")

Omit "43", substitute "43A".

193 Subsection 6(1) (after table item 43)

Insert:

43A	Sections 130D and	disqualifying and	(a) both APRA and ASIC,

Authorised Version C2023A00029

130E	removing actuaries and auditors	to the extent the provisions relate to auditors; and (b) APRA, to the extent the provisions relate to actuaries

194 Subsection 10(1)

Insert:

individual RSE auditor means an individual who is appointed as auditor of a registrable superannuation entity.

lead auditor has the meaning given by section 11F.

registered company auditor has the same meaning as in the *Corporations Act 2001*.

RSE audit company means a company that is appointed as auditor of a registrable superannuation entity.

RSE audit firm means a firm that is appointed as auditor of a registrable superannuation entity.

195 Subsection 10(1) (definition of *RSE auditor*)

Repeal the definition, substitute:

RSE auditor means:

(a) an individual RSE auditor; or

(b) an RSE audit firm; or

(c) an RSE audit company.

196 After section 11E

Insert:

11F Lead auditor

If an RSE audit firm or RSE audit company conducts an audit of a registrable superannuation entity, the ***lead auditor*** for the audit is the registered company auditor who is primarily responsible to the RSE audit firm or the RSE audit company for the conduct of the audit.

Authorised Version C2023A00029

197 Paragraph 29D(1)(a)

After "the RSE licensee law", insert "or Chapter 2M of the *Corporations Act 2001*".

198 Paragraph 29E(1)(a)

After "the RSE licensee law", insert "and Chapter 2M of the *Corporations Act 2001*".

199 Paragraph 29JA(1A)(c)

After "the RSE licensee law", insert "or Chapter 2M of the *Corporations Act 2001*".

200 Paragraph 29P(2)(c)

Repeal the paragraph, substitute:

(c) any individual, company or firm that is the RSE auditor of the registrable superannuation entity;

(ca) any individual, company or firm that has been an RSE auditor of the registrable superannuation entity for the year of income of the entity;

201 After paragraph 29P(3)(a)

Insert:

(aa) include in the notice links to each of the following reports that are publicly available on the registrable superannuation entity's website:

(i) the financial report for the year of income of the entity;

(ii) the directors' report for the year of income of the entity;

(iii) the auditor's report on the financial report for the year of income of the entity; and

202 Subsection 29PA(3)

Repeal the subsection, substitute:

(3) If:

(a) a person (the ***relevant person***) has been an individual RSE auditor of a registrable superannuation entity for a year of income of the entity; and

Authorised Version C2023A00029

(b) the relevant person is given notice of an annual members' meeting for the entity for the year in accordance with subsections 29P(2) and (3);

then:

(c) if the relevant person is a practising auditor—the relevant person must attend the meeting; and

(d) if:

(i) the relevant person is not a practising auditor; and

(ii) another person is the individual RSE auditor of the entity;

the individual RSE auditor must attend the meeting; and

(e) if:

(i) the relevant person is not a practising auditor; and

(ii) a firm or company is the RSE auditor of the entity; and

(iii) the firm or company is conducting an audit of the entity;

the lead auditor of the audit must attend the meeting.

Penalty: 50 penalty units.

(3A) If:

(a) a firm or company has been an RSE auditor of a registrable superannuation entity for a year of income of the entity; and

(b) the firm or company is given notice of an annual members' meeting for the entity for the year in accordance with subsections 29P(2) and (3); and

(c) a person (the ***relevant lead auditor***) was the lead auditor of the audit of the entity that was conducted by the firm or company for the year;

then:

(d) if:

(i) the firm or company conducts audits; and

(ii) the relevant lead auditor is a member or employee of the firm or a director or employee of the company;

the relevant lead auditor must attend the meeting; and

(e) if:

(i) the firm or company conducts audits; and

(ii) paragraph (d) does not apply; and

Authorised Version C2023A00029

(iii) a person (the ***relevant audit team member***) was a member of the audit team that was involved in the audit of the entity that was conducted by the firm or company for the year; and

(iv) the relevant audit team member is a member or employee of the firm or a director or employee of the company; and

(v) the relevant audit team member is not the lead auditor of the audit of the entity;

the relevant audit team member must attend the meeting; and

(f) if:

(i) the firm or company does not conduct audits; and

(ii) another person is the individual RSE auditor of the entity;

the individual RSE auditor must attend the meeting; and

(g) if:

(i) the firm or company does not conduct audits; and

(ii) another firm or company is the RSE auditor of the entity; and

(iii) the other firm or company is conducting an audit of the entity;

the lead auditor of the audit must attend the meeting.

Penalty: 50 penalty units.

(3B) If:

(a) 2 or more persons are required by paragraph (3A)(e) to attend a meeting; and

(b) one of those persons attends the meeting;

the remaining persons are not required to attend the meeting.

203 Subsection 29PA(5)

After "(3)", insert ", (3A)".

204 Subsection 29PD(1)

Repeal the subsection, substitute:

(1) This section applies if:

Authorised Version C2023A00029

(a) a person is required by subsection 29P(3) or (3A) to attend an annual members' meeting for a registrable superannuation entity for a year of income of the entity; and
(b) a member of the entity asks the person a question at the meeting.

205 Subsection 29PD(2)

Omit "auditor", substitute "person".

206 Subparagraph 29PD(3)(a)(iii)

Omit "auditor", substitute "individual RSE auditor, the RSE audit firm or the RSE audit company, as the case may be".

207 Section 29QB

Repeal the section.

208 Subparagraph 35A(1)(b)(ii)

After "the RSE licensee law", insert "or Chapter 2M of the *Corporations Act 2001*".

209 Paragraph 35A(1)(c)

After "the RSE licensee law", insert "and Chapter 2M of the *Corporations Act 2001* (if applicable)".

210 After subsection 35A(1)

Insert:

(1A) If accounting records of an RSE licensee or a registrable superannuation entity are kept in accordance with subsection (1), each trustee of the entity must ensure that the records are retained for at least 7 years after the end of the year of income to which the transactions relate.

211 Paragraph 35A(2)(a)

Repeal the paragraph.

212 Subsection 35A(6)

Repeal the subsection, substitute:

Authorised Version C2023A00029

Offences

(6) A trustee commits an offence if the trustee contravenes subsection (1) or (1A).

Penalty: Imprisonment for 2 years.

213 Subsection 35A(7)

After "(1)", insert ", (1A)".

214 Subsection 35A(7) (penalty)

Omit "50 penalty units", substitute "60 penalty units".

215 Subsection 35AB(3) (penalty)

Omit "50 penalty units", substitute "60 penalty units".

216 After subsection 35AC(1)

Insert:

(1A) Subject to this Part, the following may be appointed as an auditor of the registrable superannuation entity:

(a) an individual;

(b) a firm;

(c) a company.

The entity may only have one auditor.

Note: In addition to audit requirements under the RSE licensee law, a registrable superannuation entity may have audit requirements under Chapter 2M of the *Corporations Act 2001*. Subsection (8) sets out a rule that is applicable in such a case.

217 Subsection 35AC(2)

Omit "a person", substitute "an individual".

218 Subsection 35AC(2)

Omit "the person", substitute "the individual".

219 At the end of subsection 35AC(2)

Add:

Authorised Version C2023A00029

; and (c) is not a member or employee of a firm that is disqualified under section 130EA; and

(d) is not a director or employee of a company that is disqualified under section 130EA.

220 After subsection 35AC(2)

Insert:

(2A) The RSE licensee of the registrable superannuation entity must not appoint a firm or company as an auditor of the entity unless the RSE licensee is reasonably satisfied that:

(a) the lead auditor for an audit of the entity that is conducted, or to be conducted, by the firm or company:

(i) meets the eligibility criteria for auditors of registrable superannuation entities set out in the prudential standards; and

(ii) has not been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130D; and

(b) the firm or company has not been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130EA.

221 Subsection 35AC(3)

Omit "A person who", substitute "An individual, company or firm that".

222 Subsection 35AC(3)

Omit "person's appointment", substitute "appointment of the individual, company or firm".

223 Subsection 35AC(6)

Omit "a person", substitute "an individual".

224 Subsection 35AC(6)

Omit "the person", substitute "the individual".

225 At the end of subsection 35AC(6)

Add:

Authorised Version C2023A00029

; or (c) is a member or employee of a firm that is disqualified under section 130EA; or

(d) is a director or employee of a company that is disqualified under section 130EA.

226 At the end of section 35AC

Add:

(7) The RSE licensee of the registrable superannuation entity must end the appointment of a firm or company as an auditor of the entity if the RSE licensee becomes aware that:

(a) the lead auditor for an audit of the entity that is conducted, or to be conducted, by the firm or company:

(i) no longer meets the eligibility criteria for auditors of registrable superannuation entities set out in the prudential standards; or

(ii) has been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130D; or

(b) the firm or company has been disqualified from being or acting as an auditor of a registrable superannuation entity under section 130EA.

(8) If the registrable superannuation entity is a registrable superannuation entity within the meaning of Chapter 2M of the *Corporations Act 2001*, the RSE licensee for the entity must ensure that the appointed auditor of the entity is the individual, firm or company that is the auditor of the entity for the purposes of that Chapter.

(9) If:

(a) the registrable superannuation entity is a registrable superannuation entity within the meaning of Chapter 2M of the *Corporations Act 2001*; and

(b) an individual, firm or company ceases to be the auditor of the entity for the purposes of that Chapter;

then, for the purposes of the RSE licensee law, the appointment of the individual, firm or company as the auditor of the entity ends at the time of the cessation.

Authorised Version C2023A00029

227 Section 126L (heading)

Omit "**or 130D**", substitute "**, 130D or 130EA**".

228 Subsections 126L(1) and (3)

After "or 130D", insert "or tend to make a firm or company liable to disqualification under section 130EA".

229 Subsection 126L(4)

After "or 130D", insert "or a proceeding under section 130EA".

230 Before paragraph 129(1)(a)

Insert:

(aa) the person is an individual; and

231 After section 129

Insert:

129A Obligations of lead auditors—compliance

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit forms the opinion that it is likely that a contravention of any of the following may have occurred, may be occurring, or may occur, in relation to the entity:

(i) this Act, the regulations or the prudential standards;

(ii) the *Financial Sector (Collection of Data) Act 2001*;

(iii) a provision of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of ***regulatory provision*** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as it applies in relation to superannuation interests; and

(b) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit company of audit functions under this Act, the regulations, the

Authorised Version C2023A00029

prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the lead auditor has formed the opinion is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit forms the opinion that it is likely that a contravention of any of the following may have occurred, may be occurring, or may occur, in relation to the entity:

(i) this Act, the regulations or the prudential standards;

(ii) the *Financial Sector (Collection of Data) Act 2001*;

(iii) a provision of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of ***regulatory provision*** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as it applies in relation to superannuation interests; and

(b) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit firm of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

(ii) if the contravention about which the lead auditor has formed the opinion is of such a nature that it may affect

Authorised Version C2023A00029

the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

Contravention by lead auditor

(4) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(b) the person forms the opinion that it is likely that a contravention of any of the following may have occurred, may be occurring, or may occur, in relation to the entity:

(i) this Act, the regulations or the prudential standards;

(ii) the *Financial Sector (Collection of Data) Act 2001*;

(iii) a provision of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of ***regulatory provision*** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as it applies in relation to superannuation interests; and

(c) the person formed the opinion in the course of, or in connection with, the performance by an RSE audit firm or RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the person does not, immediately after the person forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

Authorised Version C2023A00029

(ii) if the contravention about which the person has formed the opinion is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

Exception—person has a belief that the opinion is not relevant to the performance of audit functions

(5) A person is not required by subsection (1), (2) or (4) to tell the Regulator, or a trustee of a registrable superannuation entity, about a matter if the person has an honest belief that the opinion mentioned in that subsection is not relevant to the performance of the audit functions mentioned in that subsection.

No civil liability for telling about a matter

(6) A person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of a registrable superannuation entity, about a matter as required by subsection (1), (2) or (4).

Offences—RSE audit company

(7) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

(8) A company commits an offence if the company contravenes subsection (1).

Penalty: 125 penalty units.

(9) An offence against subsection (8) is an offence of strict liability.

Offences—lead auditor or member of RSE audit firm

(10) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 50 penalty units.

(11) A person commits an offence if the person contravenes subsection (2) or (4).

Authorised Version C2023A00029

Penalty: 25 penalty units.

(12) An offence against subsection (11) is an offence of strict liability.

232 Before paragraph 130(1)(a)

Insert:

(aa) the person is an individual; and

233 After section 130

Insert:

130AA Obligations of lead auditors—solvency

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and

(b) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion, tell the Regulator, and a trustee of the entity, about the matter in writing.

Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and

(b) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit firm of audit functions under this Act, the regulations, the prudential

Authorised Version C2023A00029

standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(c) the lead auditor does not, immediately after the lead auditor forms the opinion, tell the Regulator, and a trustee of the entity, about the matter in writing.

(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

Contravention by lead auditor

(4) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(b) the person forms the opinion that the financial position of the entity may be, or may be about to become, unsatisfactory; and

(c) the person formed the opinion in the course of, or in connection with, the performance by an RSE audit firm or RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the person does not, immediately after the person forms the opinion, tell the Regulator, and a trustee of the entity, about the matter in writing.

No civil liability for telling about a matter

(5) A person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of a registrable

Authorised Version C2023A00029

superannuation entity, about a matter as required by subsection (1), (2) or (4).

Offences—RSE audit company

(6) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

(7) A company commits an offence if the company contravenes subsection (1).

Penalty: 125 penalty units.

(8) An offence against subsection (7) is an offence of strict liability.

Offences—lead auditor and member of RSE audit firm

(9) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 50 penalty units.

(10) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 25 penalty units.

(11) An offence against subsection (10) is an offence of strict liability.

When financial position is unsatisfactory

(12) For the purposes of this section, the financial position of an entity is taken to be unsatisfactory if, and only if, under the regulations, the financial position of the entity is treated as unsatisfactory.

234 Section 130A

Before "A person who", insert "(1)".

235 At the end of section 130A

Add:

(2) This section applies to a firm as if it were a person.

Authorised Version C2023A00029

236 Subsection 130B(1)

Omit "or 130", substitute ", 129A, 130 or 130AA".

237 Subsection 130BA(1)

After "entity" (first occurring), insert "is an individual and".

238 At the end of section 130BA

Add:

(3) If the Regulator receives a notification under subsection (1) that relates wholly or partly to an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*, the Regulator must:

(a) give a copy of the notification to ASIC; and

(b) do so as soon as practicable after receiving the notification.

(4) For the purposes of this section, ***audit*** means:

(a) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of the RSE licensee law; or

(b) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*; or

(c) an audit of a self managed superannuation fund.

239 After section 130BA

Insert:

130BAA Lead auditor—obligation to notify the Regulator of attempts to unduly influence etc. the auditor etc.

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit is aware of circumstances that amount to:

Authorised Version C2023A00029

(i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or mislead the lead auditor or a member of the audit team conducting the audit; or

(ii) an attempt by any person to otherwise interfere with the proper conduct of the audit; and

(b) the lead auditor does not notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances.

Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the lead auditor for the audit is aware of circumstances that amount to:

(i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or mislead the lead auditor or a member of the audit team conducting the audit; or

(ii) an attempt by any person to otherwise interfere with the proper conduct of the audit; and

(b) the lead auditor does not notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances.

(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

Authorised Version C2023A00029

Contravention by lead auditor

(4) A person contravenes this subsection if:
  (a) the person is the lead auditor for an audit of a registrable superannuation entity; and
  (a) the person is aware of circumstances that amount to:
    (i) an attempt, in relation to an audit of the entity, by any person to unduly influence, coerce, manipulate or mislead the lead auditor or a member of the audit team conducting the audit; or
    (ii) an attempt by any person to otherwise interfere with the proper conduct of the audit; and
  (b) the person does not notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person becomes aware of those circumstances.

Offence—RSE audit company

(5) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

Offence—lead auditor and member of RSE audit firm

(6) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

Other matters

(7) If the Regulator receives a notification under subsection (1), (2) or (4) that relates wholly or partly to an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*, the Regulator must:
  (a) give a copy of the notification to ASIC; and
  (b) do so as soon as practicable after receiving the notification.

(8) For the purposes of this section, ***audit*** means:

Authorised Version C2023A00029

(a) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of the RSE licensee law; or

(b) an audit of a registrable superannuation entity conducted in fulfilment of a requirement imposed by a provision of Chapter 2M of the *Corporations Act 2001*.

240 Before paragraph 130C(1)(a)

Insert:

(aa) the person is an individual; and

241 At the end of Division 2 of Part 16

Add:

130CA Lead auditors—failure to implement actuarial recommendations

Contravention by RSE audit company

(1) An RSE audit company conducting an audit of a registrable superannuation entity contravenes this subsection if:

(a) the entity is a defined benefit fund; and

(b) the lead auditor for the audit forms the opinion that there has been a failure to implement an actuarial recommendation relating to contributions to the fund by the employer-sponsor that a trustee of the fund, or an employer-sponsor of the fund, was required to implement and that was contained in:

(i) a report of an actuary obtained under the regulations or the prudential standards; or

(ii) a report of an actuary obtained in accordance with a requirement under the regulations or the prudential standards; or

(iii) a document in a class prescribed by regulations for the purposes of this subparagraph; and

(c) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

Authorised Version C2023A00029

(d) the lead auditor does not, immediately after the lead auditor forms the opinion:
(i) tell a trustee of the entity about the matter in writing; and
(ii) if the contravention about which the lead auditor has formed the opinion is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

Contravention by member of RSE audit firm

(2) A member of an RSE audit firm conducting an audit of a registrable superannuation entity contravenes this subsection if:
(a) the entity is a defined benefit fund; and
(b) the lead auditor for the audit forms the opinion that there has been a failure to implement an actuarial recommendation relating to contributions to the fund by the employer-sponsor that a trustee of the fund, or an employer-sponsor of the fund, was required to implement and that was contained in:
(i) a report of an actuary obtained under the regulations or the prudential standards; or
(ii) a report of an actuary obtained in accordance with a requirement under the regulations or the prudential standards; or
(iii) a document in a class prescribed by regulations for the purposes of this subparagraph; and
(c) the lead auditor formed the opinion in the course of, or in connection with, the performance by the RSE audit firm of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and
(d) the lead auditor does not, immediately after the lead auditor forms the opinion:
(i) tell a trustee of the entity about the matter in writing; and
(ii) if the contravention about which the lead auditor has formed the opinion is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

Authorised Version C2023A00029

(3) A member of an RSE audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

Contravention by lead auditor

(4) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a registrable superannuation entity; and

(b) the person forms the opinion that there has been a failure to implement an actuarial recommendation relating to contributions to the fund by the employer-sponsor that a trustee of the fund, or an employer-sponsor of the fund, was required to implement and that was contained in:

(i) a report of an actuary obtained under the regulations or the prudential standards; or

(ii) a report of an actuary obtained in accordance with a requirement under the regulations or the prudential standards; or

(iii) a document in a class prescribed by regulations for the purposes of this subparagraph; and

(c) the person formed the opinion in the course of, or in connection with, the performance by an RSE audit firm or RSE audit company of audit functions under this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* in relation to the entity; and

(d) the person does not, immediately after the person forms the opinion:

(i) tell a trustee of the entity about the matter in writing; and

Authorised Version C2023A00029

(ii) if the contravention about which the person has formed the opinion is of such a nature that it may affect the interests of members or beneficiaries of the entity—tell the Regulator about the matter in writing.

No civil liability for telling about a matter

(5) A person is not liable in a civil action or civil proceeding in relation to telling the Regulator, or a trustee of a registrable superannuation entity, about a matter as required by subsection (1), (2) or (4).

Offences—RSE audit company

(6) A company commits an offence if the company contravenes subsection (1).

Penalty: 250 penalty units.

(7) A company commits an offence if the company contravenes subsection (1).

Penalty: 125 penalty units.

(8) An offence against subsection (7) is an offence of strict liability.

Offences—lead auditor and member of RSE audit firm

(9) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 50 penalty units.

(10) A person commits an offence if the person contravenes subsection (2) or (4).

Penalty: 25 penalty units.

(11) An offence against subsection (10) is an offence of strict liability.

242 Section 130D (at the end of the heading)

Add "**—auditor or actuary**".

Authorised Version C2023A00029

243 Subsection 130D(1)

After "APRA", insert "or ASIC".

244 Subsection 130D(2)

After "disqualify a person", insert "(other than a company)".

245 Subsection 130D(3)

After "auditor", insert ", lead auditor".

246 Subparagraph 130D(4)(a)(i)

Omit "or the prudential standards', substitute ", the prudential standards or Chapter 2M of the *Corporations Act 2001*".

247 After subparagraph 130D(4)(a)(i)

Insert:

(ia) the duties of a lead auditor under this Act, the regulations, the prudential standards or Chapter 2M of the *Corporations Act 2001*; or

248 After paragraph 130D(4)(aa)

Insert:

(ab) the person has been or acted as the lead auditor for an audit of a registrable superannuation entity, knowing that the person did not meet the relevant eligibility criteria set out in the prudential standards; or

249 Subsection 130E(1)

After "APRA", insert "or ASIC".

250 After section 130E

Insert:

130EA Court power of disqualification—audit firm or audit company

(1) On application by ASIC, the Federal Court of Australia may, by order:

Authorised Version C2023A00029

(a) disqualify a firm from being or acting as an auditor of a registrable superannuation entity; or

(b) disqualify a company from being or acting as an auditor of a registrable superannuation entity;

for a period that the Court considers appropriate, if the Court is satisfied:

(c) as mentioned in subsection (2); and

(d) that the disqualification is justified.

Note: For offences relating to firms or companies disqualified under this section, see sections 131CA and 131CB.

(2) The Court may disqualify a firm or company, in accordance with subsection (1), if the Court is satisfied that:

(a) the firm or company has failed to put in place appropriate processes and systems to enable it to carry out or perform adequately and properly:

(i) its duties as an RSE audit firm or RSE audit company under this Act, the regulations or Chapter 2M of the *Corporations Act 2001*; or

(ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an RSE audit firm or RSE audit company; or

(iii) any functions that an RSE audit firm or RSE audit company is entitled to perform in relation to this Act, the regulations, the prudential standards or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the firm or company has failed to take reasonable steps to ensure that the lead auditor for an audit of a registrable superannuation entity conducted by the firm or company meets the relevant eligibility criteria set out in the prudential standards; or

(c) the firm or company has failed to take reasonable steps to ensure that the lead auditor for an audit of a registrable superannuation entity conducted by the firm or company is a fit and proper person to be a lead auditor.

(3) In deciding whether it is satisfied as mentioned in subsection (2), the Court may take into account:

Authorised Version C2023A00029

(a) any matters specified in the regulations for the purposes of this paragraph; and
(b) any other matters the Court considers relevant.

(4) As soon as practicable after the Court:
(a) disqualifies a firm under this section; or
(b) disqualifies a company under this section;
ASIC must cause particulars of the disqualification to be published in the Gazette.

130EB Court power to revoke or vary a disqualification etc.

(1) A firm or company that is disqualified under section 130EA, or ASIC, may apply to the Federal Court of Australia for a variation or a revocation of an order made under section 130EA.

(2) At least 21 days before commencing the proceedings, written notice of the application must be lodged:
(a) if the firm or company that is disqualified makes the application—by the person with ASIC; or
(b) if ASIC makes the application—by ASIC with the firm or company that is disqualified.

251 At the end of subsection 131AA(1)

Add:

Note: See also subsection (11).

252 Paragraph 131AA(2)(a)

After "130D", insert ", 130EA".

253 After paragraph 131AA(2)(a)

Insert:

(aa) if the person is a firm or company—the lead auditor for an audit of a registrable superannuation entity that is or was conducted by the person:
(i) is disqualified under section 130D; or
(ii) did not meet the relevant eligibility criteria set out in the prudential standards; or
(iii) is not a fit and proper person to be a lead auditor; or

Authorised Version C2023A00029

254 Paragraph 131AA(2)(b)

Before "the person", insert "if the person is an individual—".

255 After subsection 131AA(6)

Insert:

(6A) If APRA directs a trustee or trustees to end a person's appointment as an auditor of a registrable superannuation entity, APRA must:

(a) notify ASIC of the direction; and

(b) do so as soon as practicable after giving the direction.

256 At the end of section 131AA

Add:

Firm

(11) This section applies to a firm as if it were a person.

257 Subsection 131A(1)

Omit "RSE auditor", substitute "individual RSE auditor, a lead auditor".

258 After subparagraph 131A(1)(a)(i)

Insert:

(ia) the duties of a lead auditor under this Act, the regulations, the prudential standards or Chapter 2M of the *Corporations Act 2001*; or

259 After paragraph 131A(1)(aa)

Insert:

(ab) has been or acted as the lead auditor for an audit of a registrable superannuation entity, knowing that the person did not meet the relevant eligibility criteria set out in the prudential standards; or

260 Paragraph 131A(1)(b)

Omit "RSE auditor", substitute "individual RSE auditor, a lead auditor".

Authorised Version C2023A00029

261 Subsections 131A(1A), (2), (3) and (4)

Omit "RSE auditor", substitute "individual RSE auditor, a lead auditor".

262 At the end of subsection 131B(3)

Add:

Note 3: See also sections 131CC and 131CD.

263 After section 131B

Insert:

131BA Misleading representations by disqualified firm or company

(1) A person commits an offence if:
(a) the person is a firm; and
(b) the firm is disqualified under section 130EA; and
(c) the firm represents that a member or employee of the firm is eligible to be an RSE auditor.

Penalty: 50 penalty units.

(2) A person commits an offence if:
(a) the person is a company; and
(b) the company is disqualified under section 130EA; and
(c) the company represents that a director or employee of the company is eligible to be an RSE auditor.

Penalty: 250 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: See also sections 131CC and 131CD.

264 At the end of Division 4 of Part 16

Add:

131CA Disqualified firms and disqualified companies not to be an RSE auditor

(1) A person commits an offence if:

Authorised Version C2023A00029

(a) the person is a member of a firm; and
(b) the firm is, or acts as, an RSE auditor; and
(c) the firm is disqualified under section 130EA; and
(d) the person knows that the firm is so disqualified.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a company; and
(c) the company is disqualified under section 130EA; and
(d) the person knows that the company is so disqualified.

Penalty: 600 penalty units.

(3) A person commits an offence if:
(a) the person is a member of a firm; and
(b) the firm is, or acts as, an RSE auditor; and
(c) the firm is disqualified under section 130EA.

Penalty: 60 penalty units.

(4) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a company; and
(c) the company is disqualified under section 130EA.

Penalty: 300 penalty units.

(5) Subsections (3) and (4) are offences of strict liability.

131CB Members or employees of disqualified firms, and directors or employees of disqualified companies, not to be RSE auditors

(1) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a member or employee of a firm; and
(c) the firm is disqualified under section 130EA; and
(d) the person knows that the firm is so disqualified.

Authorised Version C2023A00029

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a director or employee of a company; and
(c) the company is disqualified under section 130EA; and
(d) the person knows that the company is so disqualified.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a member or employee of a firm; and
(c) the firm is disqualified under section 130EA.

Penalty: 60 penalty units.

(4) A person commits an offence if:
(a) the person is, or acts as, an RSE auditor; and
(b) the person is a director or employee of a company; and
(c) the company is disqualified under section 130EA.

Penalty: 60 penalty units.

(5) Subsections (3) and (4) are offences of strict liability.

265 At the end of Part 16

Add:

Division 5—Special provisions relating to firms and companies

131CC Offences by members of a firm

(1) Section 131BA and subsection 131B(2A) apply to a firm as if it were a person, but with the changes set out in this section.

(2) An offence based on section 131BA or subsection 131B(2A) that would otherwise be committed by the firm is taken to have been committed by each member of the firm.

Authorised Version C2023A00029

(3) A member of the firm does not commit an offence because of subsection (2) if the member:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

131CD Criminal liability of a firm or company

(1) For the purposes of criminal proceedings under section 131BA or subsection 131B(2A) against a firm, an act or omission by an individual who is:

(a) a member of the firm; or

(b) an employee or agent of the firm;

acting within the actual or apparent scope of the individual's employment, or within the individual's actual or apparent authority, is also to be attributed to the firm.

(2) For the purposes of criminal proceedings under section 131BA or subsection 131B(2A) against a company, an act or omission by an individual who is:

(a) an officer of the company; or

(b) an employee or agent of the company;

acting within the actual or apparent scope of the individual's employment, or within the individual's actual or apparent authority, is also to be attributed to the company.

266 At the end of paragraph 131D(1)(a)

Add:

(v) Chapter 2M of the *Corporations Act 2001*; or

267 At the end of section 131D

Add:

(6) If APRA gives a direction under paragraph (2)(e), APRA must:

(a) notify ASIC of the direction; and

Authorised Version C2023A00029

(b) do so as soon as practicable after giving the direction.

268 Subsection 336F(3)

Omit "or 130" (first occurring), substitute ", 129A, 130 or 130AA".

269 Subsection 336F(3) (note 1)

Omit "or 130", substitute ", 129A, 130 or 130AA".

270 Application—retention of accounting records

(1) Subsection 35A(1A) of the *Superannuation Industry (Supervision) Act 1993* (as amended by this Part) applies in relation to accounting records that relate to a year of income beginning on or after 1 July 2023.

(2) Despite the repeal of paragraph 35A(2)(a) of the *Superannuation Industry (Supervision) Act 1993* by this Part, that paragraph continues to apply, in relation to accounting records that relate to a year of income beginning before 1 July 2023, as if that repeal had not happened.

Authorised Version C2023A00029

Schedule 8—Amendment of the Clean Energy Finance Corporation Act 2012

Clean Energy Finance Corporation Act 2012

1 Section 4 (paragraph (a) of the definition of *responsible Ministers*)

Repeal the paragraph, substitute:

(a) the Minister administering this Act; and

2 Section 46

Before "There must", insert "(1)".

3 After paragraph 46(e)

Insert:

(ea) $11.5 billion, to be credited as soon as practicable after this paragraph commences;

4 At the end of section 46

Add:

(2) There must be credited to the Account any other money appropriated by the Parliament for the purposes of the Account.

5 Subsection 54(3) (note)

Omit "46(b)", substitute "46(1)(b)".

6 Subsections 76(1) and (2)

Repeal the subsections, substitute:

(1) The ***nominated Minister*** is the Minister administering this Act, unless a determination under subsection (2) is in force.

(2) The responsible Ministers may, by writing, determine that the ***nominated Minister*** is the Finance Minister.

Authorised Version C2023A00029

7 Subsection 76(3)

Omit "subsection (1)", substitute "subsection (2)".

Authorised Version C2023A00029

Schedule 9—Taxation of military superannuation benefits: Reversing the Douglas decision

Income Tax Assessment (1997 Act) Regulations 2021

1 After paragraph 307-70.02(1)(b)

Insert:

(ba) an income stream in respect of which these conditions are satisfied:

(i) the income stream is a defined benefit pension within the meaning of regulation 1.03 of the SIS Regulations; and

(ii) the income stream commenced on or after 20 September 2007; and

(iii) the income stream is provided by a defined benefit fund (within the meaning of regulation 1.03 of the SIS Regulations), or an exempt public sector superannuation scheme (within the meaning of the SIS Act); and

(iv) if the income stream is provided by a defined benefit fund (within the meaning of regulation 1.03 of the SIS Regulations) that is not a public sector superannuation scheme—the fund or scheme has more than 6 members, or had more than 6 members at any time on or before the day the income stream commenced; and

(v) the income stream is not invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; and

(vi) the income stream is not an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or

2 After subsection 307-70.02(1)

Insert:

(1A) Paragraphs (1)(a) and (ba) do not apply to any of the following:

Authorised Version C2023A00029

(a) a pension payable under subsection 39(1) of the *Defence Force Retirement and Death Benefits Act 1973* if:
  (i) that pension is payable because invalidity pay (within the meaning of that Act) was payable to the deceased member mentioned in that subsection; and
  (ii) that invalidity pay commenced on or after 20 September 2007;

(b) a pension payable under subsection 42(1) of the *Defence Force Retirement and Death Benefits Act 1973* if:
  (i) that pension is payable because invalidity pay (within the meaning of that Act) was payable to a member (as mentioned in subsection 42(3)); and
  (ii) that invalidity pay commenced on or after 20 September 2007;

(c) a pension payable under subsection 43(1) of that Act if:
  (i) that pension is payable because invalidity pay (within the meaning of that Act) was payable to a member (as mentioned in subsection 43(3)); and
  (ii) that invalidity pay commenced on or after 20 September 2007;

(d) a pension payable under subrule 42(1) or (3) of the Rules (within the meaning of the *Military Superannuation and Benefits Act 1991*) if:
  (i) the deceased retirement pensioner's pension mentioned in that subrule was an invalidity pension (within the meaning of those Rules); and
  (ii) that invalidity pension commenced on or after 20 September 2007;

(e) a pension payable under subrule 46(1) of those Rules if the deceased person's notional pension mentioned in that subrule was a pension covered by paragraph (d).

3 In the appropriate position in Chapter 7

Insert:

Authorised Version C2023A00029

Part 1000-3—Transitional matters relating to the Treasury Laws Amendment (2022 Measures No. 4) Act 2023

1000-3.01 Definitions

In this Part:

2021 commencement time means the commencement time (within the meaning of Part 1000-1).

old regulations has the same meaning as in Part 1000-1.

1000-3.02 Application of amendments

The amendments of section 307-70.02 made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* apply in relation to income years starting on or after the 2021 commencement time.

1000-3.03 Modified continuing application of old regulations

(1) This section applies for the purposes of the continuing application of the old regulations, as mentioned in subsection 1000-1.02(2), in relation to an income year starting on or after 1 July 2007.

(2) For those purposes, in determining whether an income stream is a superannuation income stream:

(a) if the income stream would be (apart from this subsection) a superannuation income stream under that continuing application, but would *not* be a superannuation income stream under section 307-70.02 because of the amendments made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*—treat the income stream as *not* being a superannuation income stream; and

(b) if the income stream would *not* be a superannuation income stream under that continuing application (apart from this subsection), but would be a superannuation income stream

Authorised Version C2023A00029

under section 307-70.02 because of those amendments—treat the income stream as being a superannuation income stream.

4 Application of amendments

Part 1000-3 of the *Income Tax Assessment (1997 Act) Regulations 2021*, as inserted by this Schedule, has effect despite subsection 12(2) of the *Legislation Act 2003*.

Income Tax Assessment Act 1997

5 Section 13-1 (at the end of the table item headed "superannuation")

Add:

veterans' invalidity pensions	Subdivision 301-F

6 Subsection 63-10(1) (after table item 20)

Insert:

21	*Tax offset under Subdivision 301-F (veterans' superannuation (invalidity pension) tax offset)	Apply it against your liability (if any) to pay *Medicare levy for the income year. To the extent that an amount of it remains, apply it against your liability (if any) to pay *Medicare levy (fringe benefits) surcharge for the income year. To the extent that an amount of it remains, you cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year

7 At the end of Division 301

Add:

Authorised Version C2023A00029

Subdivision 301-F—Veterans' superannuation (invalidity pension) tax offset

Table of sections

301-275 Veterans' superannuation (invalidity pension) tax offset

301-275 Veterans' superannuation (invalidity pension) tax offset

(1) You are entitled to a *tax offset for an income year if:

(a) you are an individual; and

(b) during the income year, you receive one or more *superannuation lump sums that are payments of:

(i) invalidity pay within the meaning of the *Defence Force Retirement and Death Benefits Act 1973*; or

(ii) an invalidity pension under the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*; or

(iii) a pension mentioned in a paragraph of subsection 307-70.02(1A) of the *Income Tax Assessment (1997 Act) Regulations 2021*.

(2) The amount of your *tax offset is worked out as follows:

(a) first, work out the amount by which your basic income tax liability exceeds the total of the amount of your tax offsets (if any) for the income year under:

(i) this Division (other than this Subdivision); and

(ii) Subdivision AB of Division 17 of Part III of the *Income Tax Assessment Act 1936*;

(b) next, work out the total of:

(i) the amount worked out under paragraph (a); and

(ii) the amounts (if any) of *Medicare levy and *Medicare levy (fringe benefits) surcharge you are liable to pay for the income year;

(c) next, work out the total of:

(i) the amount worked out under paragraph (a); and

(ii) the amounts (if any) of Medicare levy and Medicare levy (fringe benefits) surcharge you are liable to pay for the income year;

Authorised Version C2023A00029

on the assumptions mentioned in subsection (3);

(d) next, work out the amount (if any) by which the total worked out under paragraph (b) exceeds the total worked out under paragraph (c).

(3) For the purposes of paragraph (2)(c), the assumptions are that:

(a) each *superannuation lump sum mentioned in paragraph (1)(b) were a *superannuation income stream benefit; and

(b) for the purposes of section 307-125 (proportioning rule), the invalidity pay, invalidity pension or pension mentioned in paragraph (1)(b) of this section were a *superannuation income stream.

Income Tax (Transitional Provisions) Act 1997

8 At the end of Division 301

Add:

301-90 Application of Subdivision 301-F of the *Income Tax Assessment Act 1997*

Subdivision 301-F of the *Income Tax Assessment Act 1997* applies in relation to income years starting on or after 1 July 2007.

301-95 Amendment of assessments to give effect to Subdivision 301-F of the *Income Tax Assessment Act 1997* etc.

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to the following in respect of an income year that starts on or before 1 July 2021:

(a) Subdivision 301-F of the *Income Tax Assessment Act 1997*;

(b) the amendments of the *Income Tax Assessment (1997 Act) Regulations 2021* made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the periods within which assessments may be amended.

Authorised Version C2023A00029

301-100 Amendment of assessments—transitional rule for permanent incapacity benefits, etc.

(1) This section applies if:

(a) a superannuation benefit (the ***trigger benefit***) was paid to a person in the 2020-21 income year or an earlier income year; and

(b) the Commissioner made an assessment for the income year for the person before 4 December 2020; and

(c) the trigger benefit was paid to the person because the person satisfied a condition of release specified in item 103 (permanent incapacity) of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*; and

(d) the Commissioner made the assessment on the basis that the trigger benefit was a superannuation lump sum.

(2) The Commissioner cannot amend an assessment on the basis that a superannuation benefit paid to the person is a superannuation income stream benefit because of the amendments made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* if:

(a) the superannuation benefit is the trigger benefit; or

(b) all of these conditions are satisfied:

(i) the assessment is for the 2021-22 income year or an earlier income year;

(ii) the superannuation benefit was paid to the person after the trigger benefit was paid to the person;

(iii) the superannuation benefit was paid to the person because the person satisfied a condition of release specified in item 103 (permanent incapacity) of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*;

(iv) the Commissioner made the assessment on the basis that the superannuation benefit was a superannuation lump sum.

(3) Subsection (2) applies despite any other provision of this Act (apart from subsection (4) of this section), the *Income Tax Assessment Act 1997* and the *Income Tax Assessment Act 1936*.

Authorised Version C2023A00029

(4) Subsection (2) does not apply in any of these cases:

(a) if the Commissioner may amend the assessment in accordance with item 5 (fraud or evasion) or 6 (review or appeal) of the table in subsection 170(1) of the *Income Tax Assessment Act 1936*;

(b) if the amendment is made for the purpose of giving effect to a provision specified in the regulations for the purposes of this paragraph.

301-105 Transitional rules for Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*

(1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) that:

(a) relate to the amendments or repeals made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*; and

(b) relate to either or both of the 2022-23 and 2023-24 income years.

(2) Without limiting subsection (1), rules made under this section before the end of the period of 12 months starting on the day that Schedule commences may provide that provisions of that Schedule, or any other Act or instrument, have effect with any modifications prescribed by the rules. Those provisions then have effect as if they were so modified.

(3) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in any Act;

(e) directly amend the text of an Act.

(4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitem (1).

Authorised Version C2023A00029

[*Minister's second reading speech made in—*
House of Representatives on 30 November 2022
Senate on 1 December 2022]

(124/22)

Authorised Version C2023A00029