

2022–2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2023: MISCELLANEOUS AND TECHNICAL AMENDMENTS – SPRING 2023

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ACL	Australian Consumer Law (Schedule 2 to the <i>Competition and Consumer Act 2010</i>)
ACL IGA	Intergovernmental Agreement for the Australian Consumer Law
ACNC	Australian Charities and Not-for-profits Commission
ACNC Act	<i>Australian Charities and Not-for-profits Commission Act 2012</i>
ASIC	Australian Securities and Investment Commission
Bill	TBC
Corporations Act	<i>Corporations Act 2001</i>
Fees Act	<i>Corporations (Fees) Act 2001</i>
FFR Act	<i>Federal Financial Relations Act 2009</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
GST	Goods and services tax
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
NDIS	National Disability Insurance Scheme
Review Fees Act	<i>Corporations (Review Fees) Act 2003</i>

Chapter 1: *Minor and technical amendments*

Outline of chapter

- 1.1 Schedule # to the Bill makes a number of miscellaneous and technical amendments to Treasury portfolio legislation. The amendments demonstrate the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.
- 1.2 The amendments repeal inoperative provisions, simplify provisions and reduce red tape.

Context of amendments

- 1.3 Miscellaneous and technical amendments are periodically made to Treasury portfolio legislation to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes. The amendments are part of the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.
- 1.4 The miscellaneous and technical amendments process was first supported by a recommendation of the 2008 Tax Design Review Panel, which was appointed to examine how to reduce delays in the enactment of tax legislation and improve the quality of tax legislation. The miscellaneous and technical amendments process has since been expanded to all Treasury portfolio legislation.

Summary of new law

- 1.5 The miscellaneous and technical amendments maintain and improve the quality of Treasury legislation by:
 - repealing redundant and inoperative provisions;
 - enhancing readability and administrative efficiency;
 - reducing unnecessary red tape; and
 - making other technical changes.

Detailed explanation of new law

Part 1 – Amendments commencing the day after Royal Assent

Division 1 – Federal Financial Relations Act 2009

- 1.6 Division 1 of Part 1 of Schedule # to the Bill repeals section 13 of the FFR Act and removes a reference to the section in paragraph 21(aa) of the FFR Act.
- 1.7 Section 13 of the FFR Act provides that financial assistance is payable to states and territories for the purpose of expenditure on disability services. Payments under section 13 were provided to states and territories during their transition to the NDIS. As all states and territories have now fully transitioned to the NDIS, payments under section 13 are no longer made.
- 1.8 A consequential amendment is made to paragraph 21(aa) of the FFR Act to remove the reference to section 13.
[Schedule #, items 1 and 2, section 13 and paragraph 21(aa) of the FFR Act]

Division 2 – Corporations Act 2001

- 1.9 Section 1351 of the Corporations Act relevantly provides that fees imposed under the Fees Act and the Review Fees Act are payable to the Commonwealth. Of those fees, some are payable for the lodgement of documents (see paragraphs 4(1)(a) and (m) of the Fees Act). Section 1354 of the Corporations Act provides that non-payment of the fee will not invalidate the lodgement of the document.
- 1.10 Division 2 of Part 1 of Schedule # to the Bill updates subsection 1354(2) of the Corporations Act to simplify the provision, which previously contained a triple negative.
[Schedule #, item 3, subsection 1354(2) of the Corporations Act]

Division 3 – Australian Consumer Law

- 1.11 Division 3 of Part 1 of Schedule # to the Bill amends subsection 104(2) of the ACL. Section 104 sets out requirements for making safety standards for consumer goods and product related services. Under paragraph 104(2)(c), the Minister can prescribe ‘the form and content of markings, warnings or instructions to accompany consumer goods of that kind’. This means that the safety standards accompany a physical product, and cannot be communicated by other manners such as on a retailer’s website.
- 1.12 An increase in online shopping makes it increasingly important that safety information is available at the online point of sale to assist consumers’ purchasing decisions. Point of sale information requirements could be made

under an information standard under section 134 of the ACL. However, this would create unnecessary duplication as both an information standard and safety standard may be required to cover different types of safety information for one product. Furthermore, it is unnecessarily burdensome for businesses (who must navigate both standards), and for State and Commonwealth Consumer Ministers who are required to vote on section 134 information standards under the ACL IGA.

- 1.13 The amendment in Division 3 inserts new paragraph 104(2)(d) to ensure that the Minister is able to prescribe point of sale safety information requirements as product safety standards. This allows the Minister to make all safety information requirements under the single provision, as opposed to issuing separate safety standards and information standards under different provisions on the safety information of each product.
[Schedule #, item 4, paragraphs 104(2)(c)-(d) of the ACL]

Division 4 – When resignation of directors of registered charities and not-for-profits takes effect

- 1.14 The *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* introduced a series of reforms to combat illegal phoenixing of companies. These reforms included section 203AA of the Corporations Act.
- 1.15 Section 203AA provides that, generally, the resignation of a company director can only take effect after written notice is provided to ASIC.
- 1.16 Section 111N of the Corporations Act provides that certain information provided to the ACNC by a not-for-profit body corporate is taken to have also been provided to ASIC. However, section 111N does not apply to a notice to the ACNC that a director of an entity registered with the ACNC has resigned.
- 1.17 As a result, the resignation of a company director for a not-for-profit body corporate cannot take effect until notice is provided to both ASIC and the ACNC.
- 1.18 Division 4 of Part 1 of Schedule # to the Bill amends section 111N of the Corporations Act so that notifying the Commissioner of the ACNC that a director of an entity registered with the ACNC has resigned will also satisfy the obligation to notify ASIC of a resignation under section 203AA.
- 1.19 If the notice provided to the ACNC specifies a date the person ceased to be a director, the person will be treated as having stopped being a director of the entity from that day for the purposes of subsection 203AA(1) of the Corporations Act.
[Schedule #, item 6, paragraph 111N(5)(b) of the Corporations Act]
- 1.20 If the notice does not specify a date the person ceased to be director, resignation will generally take effect in accordance with section 203AA of the Corporations Act, which sets out when resignation takes effect. These rules are modified for a director of a ‘small registered entity’, as defined by the ACNC Act, so that the entity will have 60 days to notify the Commissioner of

the ACNC of the resignation rather than 28 days.

[Schedule #, item 6, paragraph 111N(5)(c) of the Corporations Act]

- 1.21 Item 6 also clarifies that acting responsible entities within the meaning of Subdivision 100C of the ACNC Act are company directors and are subject to the same notification obligations. ASIC is treated as being notified once an acting responsible entity gives written resignation to the Commissioner of the ACNC. This resignation takes effect as set out in subsection 110-50(2) of the ACNC Act.

[Schedule #, item 6, subsection 111N(6) of the Corporations Act]

- 1.22 The ACNC must provide details of the resignation notice to ASIC. This applies in relation to notices of resignation from responsible entities and acting responsible entities who are directors.

[Schedule #, item 6, subsection 111N(7) of the Corporations Act]

- 1.23 The amendments made by Division 4 will only apply to resignation notices given to the Commissioner of the ACNC on or after commencement of the Division.

[Schedule #, item 7, section 1703 of the Corporations Act]

Part 2 – Amendments commencing first quarter after Royal Assent

Division 1 – Input tax credits

- 1.24 Division 1 of Part 2 of Schedule # to the Bill amends provisions in the GST Act relating to the attribution of input tax credits to tax periods. The amendments ensure the provisions operate as intended and that input tax credits are attributable to appropriate tax periods. The amendments are not intended or expected to be detrimental to taxpayers in any way.
- 1.25 Subject to the outcomes of public consultation on the draft amendments, equivalent amendments to the *Fuel Tax Act 2006* and other relevant legislation will be prepared and introduced alongside these amendments.

Attribution rules for input tax credits not taken into account in assessments

- 1.26 Input tax credits for creditable acquisitions are ordinarily attributable to tax periods under subsections 29-10(1), (2) or (3) of the GST Act. Current subsection 29-10(4) of the GST Act provides attribution rules for cases where the GST return for a tax period did not take into account an input tax credit that would otherwise be attributable to that tax period. Following the decision of the *Federal Commissioner of Taxation v Travelex Limited* [2021] HCA 8, the operation of this rule does not align with the past administrative practice of the Commissioner of Taxation and taxpayers' expectations. The amendments provide new attribution rules which will align with the prior understanding of the law and ensure flexibility for taxpayers.

- 1.27 Current subsection 29-10(4) of the GST Act is repealed and replaced with new subsections 29-10(4) to (6). The new provisions provide rules for when an input tax credit to which a taxpayer is entitled is not taken into account in the assessment for the tax period to which it would be attributable under subsections 29-10(1), (2) or (3).
- 1.28 Under the new provisions, if an input tax credit that is attributable to a tax period is not taken into account in a taxpayer's assessment for that period, the taxpayer may elect for the input tax credit to instead be attributable to a later specified tax period. The election must be made in the approved form and cannot be amended or revoked. It is expected that one of the approved forms for this purpose would form part of the business activity statement, allowing taxpayers to make the choice by including the credit in the business activity statement for a subsequent period.
[Schedule #, items 8, 9, 17 and 18, sections 29-10 and 133-5 of the GST Act]
- 1.29 The provisions in Division 93 of the GST Act continue to provide a time limit on a taxpayer's entitlements to an input tax credit for creditable acquisitions. Under these provisions, a taxpayer's entitlement to an input tax credit ceases unless it is taken into account in an assessment within a certain period (generally, four years after the taxpayer was required to lodge the GST return for the tax period to which the credit would ordinarily be attributable). Any election under the new rules must also be made within the time limit and attribute the input tax credit to a specified time period within the time limit. Otherwise, the taxpayer will cease to be entitled to the input tax credit.
- 1.30 The amendments apply in relation to input tax credits that are ordinarily attributable to tax periods that start on or after 1 July 2012, being the date on which the previous attribution rules came into effect. The retrospective application helps ensure the legislation conforms with past practice, avoiding uncertainty for taxpayers and the Commissioner of Taxation by confirming past actions had the effect they were understood to have at the time.
[Schedule #, subitem 19(1)]
- 1.31 Transitional provisions support the retrospective application of the amendments and help ensure unintended consequences do not arise. Firstly, subitem 19(2) in Schedule # to the Bill is intended to limit the retrospective application of the amendments to ensure they do not unintentionally revive past disputes in relation to old input tax credits that have never been claimed and, as of the day of the release of this exposure draft, are outside the usual four-year time limit for input tax credit entitlements under Division 93 (see paragraph 1.29). Treasury is continuing to consider whether subitem 19(2) appropriately gives effect to this intention.
[Schedule #, subitem 19(2)]
- 1.32 Secondly, item 20 provides a specific transitional rule to ensure that where input tax credits were taken account into a GST return, purported GST return or assessment for GST, then this will be appropriately recognised in the retrospective application of the new law. This will ensure these past actions are

validated and the previously understood outcomes are preserved.

[Schedule #, item 20]

- 1.33 The retrospective application and transitional provisions are not expected to result in the amendments causing any detriment to taxpayers.

Time limit on entitlements to input tax credits in relation to certain determinations

- 1.34 Under subsection 29-25(1) of the GST Act, the Commissioner of Taxation can determine the tax period to which an input tax credit for a creditable acquisition is attributable. Prior to the amendments, the legislation did not adequately deal with the interactions between subsection 29-25(1) and the time limit rules in Division 93 of the GST Act.

- 1.35 Under the amendments, subsection 93-10(1) of the GST Act addresses this issue by providing that, if the Commissioner makes such a determination, a taxpayer only ceases to be entitled to the input tax credit if it has not been taken into account in an assessment of theirs within four years after they were required to lodge the GST return for the tax period to which the input tax credit is attributable under the determination. This time limit is broadly consistent with other time limits in Division 93 of the GST Act (for example, subsection 93-5(1) of the GST Act provides a four-year time limit).

[Schedule #, items 10 to 16, and 19, section 93-10 of the GST Act]

- 1.36 The amendments apply in relation to input tax credits that would ordinarily be attributable to a tax period that starts on or after 1 July 2012, being the date on which the current version of Division 93 of the GST Act came into effect. The retrospective application helps ensure the legislation conforms with past administrative practice and taxpayers' expectations, and it is not expected to be detrimental to taxpayers in any way.

[Schedule #, item 19]

Division 2 – Income tax deduction for GST paid by reverse charge

- 1.37 GST that constitutes a cost to business should generally be deductible for income tax purposes, to the extent that the cost cannot otherwise be recouped via an input tax credit.

- 1.38 Under subsection 27-15(1) of the ITAA 1997, a taxpayer is not able to obtain an income tax deduction for the payment of GST under Division 33 of the GST Act, subject to certain exceptions. Currently, GST payable by way of reverse charge is not explicitly provided for as a deduction for income tax purposes.

- 1.39 GST payable by way of reverse charge is a legitimate cost that a taxpayer can incur in deriving assessable income. A taxpayer should be able to claim an income tax deduction for GST payable by way of reverse charge, to the extent that:

- the GST is greater than any input tax credits they are entitled to; and

- the requirements of section 8-1 (general deductions) of the ITAA 1997 are satisfied.

1.40 Amendments are made to section 27-15 of the ITAA 1997 to clarify the deduction.

[Schedule #, items 21 and 22, section 27-15 of the ITAA 1997]