



## Tax Laws Amendment (2009 Measures No. 2) Bill 2009

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## **Tax Laws Amendment (2009 Measures No. 2) Bill 2009**

**Date introduced:** 19 March 2009

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** All items commence on the day of Royal Assent except for item 1 of Schedule 2 which commenced on 21 June 2007, Schedule 3 and Schedule 7 which commence on 1 July 2009, Part 2 of Schedule 8 which commences on 1 July 2011, and Part 2 of Schedule 4 which commences on 1 July 2014. Part 2 of Schedule 5 commenced on 1 January 2008 (which was the commencement of Schedule 3 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*) and Part 2 of Schedule 6 commences on a single day to be fixed by Proclamation, or 12 months from Royal Assent, whichever occurs first.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### **Purpose**

There are a slew of programs in the May 2008 Budget and also the recently announced measures as a consequence of the Victorian bushfire and the global financial crisis that have tax implications, which will come under the purview of this Bill.

The Bill contains eight schedules, each of which has a different purpose, depending on its subject matter, including:

- modifying the tax treatment of any payments made by the Australian Prudential Regulation Authority (APRA) under the financial claims scheme
- increasing access to the small business capital gains tax concessions
- exempting from capital gains tax any capital gains or losses arising from a right or entitlement to a tax offset, deduction or similar benefit
- refundable tax offsets for certain projects under the National Urban Water and Desalination Plan
- modifying the list of deductible gift recipients

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- the Australian Business Register and the register acting as the Multi-agency Registration Authority
- removing the Greenhouse Challenge Plus Programme condition for fuel tax credits, and
- for tax purposes, exempting the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the recent Victorian bushfires.

## Background

As there is no central theme to the Bill, the background to the various measures and the related main provisions will be considered according to the order they are contained in the eight Schedules.

### Committee consideration

The Bill was referred to the Senate Economics Committee for inquiry, with the [report](#) being tabled on 7 May.<sup>1</sup> The committee recommended that the Bill be passed.

## Schedule 1—Tax treatment of payments under financial claims scheme

### Purpose

The purpose of the provisions in **Schedule 1** is to modify the current treatment of payments by the APRA or a liquidator to depositors under the financial claims scheme. The changes reflect the *bona fide* nature of the payment for tax purposes, treating the payment as if it had been made by the failed institution that APRA or the liquidator replaces.

Usually, the failure of such treatment of payments by APRA would have resulted in adverse tax consequences for the receivers of the payment.

### Background

In October 2008, the Rudd Government introduced the financial claims scheme (FCS) by amending the *Banking Act 1959* (the Banking Act) and *Insurance Act 1973* (the Insurance Act) through the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008*.

As noted in the Explanatory Memorandum for the current Bill:

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1. See [http://www.aph.gov.au/senate/committee/economics\\_ctte/tlab\\_2\\_09/report/index.htm](http://www.aph.gov.au/senate/committee/economics_ctte/tlab_2_09/report/index.htm), viewed 12 May 2009.

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[The financial claims scheme] allows APRA to pay depositors in failed financial institutions some part of their deposit, subject to a global limit determined by the Treasurer when he or she activates the scheme in a particular case. To the extent that APRA makes a payment, that part of depositors' rights to recover their deposit is assigned to APRA.<sup>2</sup>

The scheme also applies to payments under a general insurance policy.

The following account holders are entitled to receive payments under the scheme:

- an Authorised Deposit-taking Institution (ADI) deposit holder
- a claimant under a general insurance policy
- holders of Farm Management Deposits (FMDs)
- holders of retirement savings accounts (RSAs)
- holders of first home savers accounts (FHSAs)

#### Income tax and capital gains tax

Currently, tax may be assessed on any interest or gains paid, payable or credited on financial deposits held in an ADI. The derived benefit is treated as income and must be included in the deposit holder's assessable income.

Under the amendments contained in Schedule 1, capital gains and capital losses arising from the rights under the scheme are disregarded, thus ensuring the scheme does not trigger any CGT consequences that would not have arisen if the scheme was not activated.

#### Farm management deposits

Under **proposed section 393-80** of the *Income Tax Assessment Act 1936* (ITAA 1936), contained in **item 15**, there are no adverse taxation implications for holders of FMDs arising from the scheme where FMDs are held with ADIs. The actions of both the liquidators of failed ADIs and the administrator of the financial claims scheme will be covered under this new arrangement with the creation of any new FMDs being treated from a tax perspective as a transfer from the old ones.

#### Retirement savings accounts

The treatment will be the same as above for RSAs held with failed ADIs.

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2. Explanatory Memorandum to the Tax Laws Amendment (2009 Measures No.2) Bill 2009, p. 9.

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### First home savers accounts

Currently in order to restrict the account holder's entitlement to the government contribution, the *First Home Savers Account Act 2008* (the FHSA Act) does not allow any transfer from one FHSA provider to another FHSA provider.

Under the new arrangement contained in **item 9** (being **proposed section 128A** of the FHSA Act), the FCS payment will fit within paragraph 11(3)(a) of the FHSA Act, enabling APRA to open a new FHSA and transfer the funds on behalf of the individual without affecting their eligibility.

However, if there is a delay in opening up a new FHSA with a new ADI, the situation may arise where the individual is no longer eligible to have an FHSA (e.g. because they have acquired a qualifying interest in a dwelling). If that is the case, individuals will have to report to the new provider about their ineligibility within 30 days. The tax and penalty consequences of ineligibility, upon receipt of the notice, will be as close as possible to what they would have been if the original FHSA provider had not failed.

With the Government likely to change the extent of the deposit guarantee in the future, proposed Section 128A also allows the liquidator to pay a distribution (from the liquidation of the provider of the old FHSA) into a new FHSA, even if the FHSA eligibility requirements are not met.

As current FHSA providers are liable to be prosecuted for a criminal offence if they make payments beyond the limits under the FHSA Act, the provisions contained in **Schedule 8** of that Act allow APRA to be reimbursed if that is the case. The liquidator of an account provider will thus not be prevented from paying APRA any monies it is entitled to as a result of becoming a substituted creditor under the FCS in such situations.

### Reporting and withholding obligations

In order to ensure that taxpayers do not have unanticipated tax liabilities following the assessment of their taxable income for the relevant income year, which they may have difficulty paying, these amendments will allow APRA to solicit information from certain entities relevant to preparing and giving statements to account holders of the failed ADI or reports to the Commissioner of Taxation or to comply with an obligation under a law relating to taxation. The amendments will also ensure that the PAYG withholding provisions apply to payments made under the FCS.

### Pros and cons

The amendments proposed in **Schedule 1** essentially address any adverse tax consequences, or any transfer of benefits that accrue to the account holders of failed financial institutions under the FCS. Further, the changes streamline the reporting and tax

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withholding provisions that would otherwise apply to payments made by APRA or the administrator of the failed financial/banking companies.

However, the changes could be wrongly perceived as giving liquidators more powers in dealing with failed ADIs on a case by case basis, raising false expectations among account holders.

### Financial implications

The estimates are unquantifiable, but would be negligible because the tax outcomes are designed to be the same as if the payments had been made by the original financial or insurance institution.<sup>3</sup>

### Main provisions

**Items 1 and 30 of Schedule 1** to the Bill provide for the modification of Division 2AA of Part II and subsections 16AHA(1) to (4) of the Banking Act and Part VC and subsections 62ZZKA(1) to (5) of the Insurance Act. The proposed amendments define APRA's role and the process for giving annual statements to the account holders of failed ADIs and submitting a separate annual report to the Commissioner of Taxation. The process of giving statements and submitting reports about all amounts paid to, or applied for the benefit of, account-holders and all amounts paid to, or applied for the benefit of, recipients in the previous financial year have also been proposed to conform to the above Acts once the FCS comes into play. If there is no payment as such, APRA will not be required to submit any statement or any report for such purposes.

**Items 2 and 31** relate to the application of a reporting provision on the amount paid or applied before, on or after the commencement of the proposed amendments to the Banking Act and the Insurance Act.

**Item 3** inserts proposed amendments to paragraphs 16AK(4)(ea) and (eb) of the Banking Act. The proposed amendments will allow APRA to solicit specified information, upon written notice, about an account holder for the purposes of preparing and giving a statement or reporting under proposed section 16AHA (see Item 1 of Schedule 1 above), and complying with an obligation under a law relating to taxation.

**Item 8** contains a note to existing subsection 31(1) of the FHSA Act to make it clear that section 31(which states that a FHSA provider must not make a payment from a FHSA unless authorised by law) does not prevent APRA making a payment under the financial claims scheme. This will ensure any tax or penalty consequences are deferred until a new account has been established with a new FHSA provider after the usual delay in the completion of such transfers by the liquidators of a failed ADI or insurance company.

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3. [Explanatory Memorandum](#), p. 3.

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**Item 9** inserts **proposed section 128A** into the FHSA Act, which introduces special provisions that apply if FCS entitlements arise in relation to FHSAs. The amendments provide that the payment of a scheme entitlement into a new FHSA is treated as a transfer between FHSAs as contained in paragraph 11(3)(a) of the FHSA Act, which stops a transfer from one FHSA provider to another provider being eligible for the government contribution.

The amendments would:

- ensure the eligibility rules in paragraphs 15(1)(e) and (f) of the FHSA Act are disregarded;
- allow APRA or the liquidator their obligations under the financial claims scheme to open a new account for the FHSA holder;
- provide that the person gives notice within 30 days after notice is sent that a new account has been opened in his or her name with a new FHSA provider; and
- ensure that APRA's right to be reimbursed out of money held in the declared ADI is not affected by the limits on payments out of FHSA accounts contained in section 31 of the FHSA Act.

**Item 10** provides that the amendments of the FHSA Act contained in the Bill apply from on 17 October 2008.<sup>4</sup> This gives a retrospective effect to the tax treatment of the payments with the enforcement of the scheme, so that no taxpayer is adversely affected.

**Item 15** modifies the entitlement under Division 2AA of Part II of the Banking Act in connection with an account containing farm management deposits (FMDs). **Item 15** inserts **proposed subdivision 393-D** of the ITAA 1936, which provides special rules relating to the financial claims scheme for account-holders with insolvent ADIs. Particularly, it modifies the operation of existing sections 393-35 and 393-40 of the ITAA 1936 by making a new deposit at a new ADI, either by the account holder or by the liquidator of a farm managed deposits. The modification also ensures that the taxpayer is not assessed on unpaid FMDs under the scheme by inserting **proposed section 393-85** of Schedule 2G to the ITAA 1936. This section deals with the repayment of a FMD held in an insolvent ADI if the account-holder dies, is bankrupt, or ceases to be a primary producer.

**Item 16** provides that the amendments to Schedule 2G to the ITAA 1936 contained in **items 11-15** of Schedule 1 apply retrospectively to assessments for the year of income including 18 October 2008 and later years.

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4. Note: The financial claims scheme for account-holders with insolvent ADIs commenced on 18 October 2008: item 10.

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**Item 20** inserts **proposed Division 253** to the ITAA 1997 to provide that the income tax law is applied to a taxpayer if an amount is paid under the financial claims scheme in the same way as if the amount was paid by the ADI under the terms and conditions of the agreement for keeping the account. **Proposed section 253-10** provides that a taxpayer should disregard a capital gain or loss a taxpayer makes because of the operation of the financial claims scheme. **Proposed section 253-15** specifies that the cost base of the part of a deposit which is covered by the scheme is equal to the payment under the scheme, and the cost base of the remainder of the deposit will be equal to the deposit reduced after the payment.

**Item 21** inserts **proposed section 306-25** dealing with payments to retirement savings accounts (RSAs) connected with the financial claims scheme. It modifies the treatment of RSAs under the taxation arrangements that apply after the operation of the scheme under Division 306, and reporting obligations under Division 390 of the ITAA 1997. Division 306 sets out the tax treatment of payments made from one superannuation plan to another superannuation plan, and of similar payments. This item enables such accounts to enjoy similar treatment under the scheme, without any adverse tax and penalty consequences.

**Item 26** inserts **proposed Subdivision 322-B** of the ITAA 1997 dealing with the tax treatment of entitlements under the financial claims scheme. Particularly it inserts **proposed sections 322-25 and 322-30** to specify the income tax treatment of scheme payments in respect of general insurance policies and to specify that the disposal of rights against an insurer to APRA and/or the meeting of a financial claims scheme entitlement has no CGT effect. In relation to a general insurance claim payable by a general insurer to a policy holder, the administrator will treat the payment for income tax purposes as if they were paid directly by the general insurer, and made under the terms and conditions of the general insurance policy. Any capital gain or loss arising out of ending of an entitlement under the scheme in relation to an ADI deposit or general insurance policy is disregarded.

**Items 27 and 29** state that the new rules in **item 26** relating to the disregarding of capital gains or losses in respect of ADI deposits or general insurance policies apply to CGT events after 17 October 2008 (i.e. after the commencement of the scheme).

**Item 30 to 33** amend the Insurance Act in relation to the information that APRA must give policy holders and the Commissioner of Taxation in relation to payments made under the financial claims scheme. **Item 32** amends subsection 62ZZM(1) of the Insurance Act to give the same character to payments under the scheme as the payments made by the general insurer under the terms and conditions of the policy. **Item 33** inserts **proposed paragraphs 62ZZP(4)(da) and (db)** allowing APRA, by written notice, to require a certain entity to give a specified person specified information relevant to preparing or giving a statement or report required under section 62ZZKA of the Insurance Act (which are relevant to complying with an obligation under a law relating to taxation).

**Item 34** inserts **proposed Division 21** into *the Taxation Administration Act 1953* (the TAA 1953) dealing with entitlements relating to insolvent ADIs and general insurers. It

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ensures that the PAYG withholding provisions apply to payments made to meet an entitlement under the financial claims scheme in a way corresponding to the way that the PAYG withholding provisions would have applied if the payment were made by an ADI or general insurance company.

**Item 35** provides that **proposed Division 21** operates retrospectively and applies to things done before, on, or after 17 October 2008. However, **item 35** also states that APRA is not required to do anything it was not required to do before the commencement of the financial claims scheme, and nor is it liable under criminal or civil law for any omission occurring before that date.

## Schedule 2 – Capital Gains Tax (CGT) concessions for small business

### Purpose

Under the current law, taxpayers who do not carry on a business but own a CGT asset that is used in a business by the taxpayer's affiliate or an entity connected with the taxpayer, are not able to access the [small business CGT concessions](#)<sup>5</sup> via the small business entity test.

Schedule 2 makes various changes in order to increase access to the CGT concessions for taxpayers owning a CGT asset used in a business by an affiliate or entity connected with the taxpayer and for partners owning a CGT asset used in the partnership business,

### Background

The small business CGT concessions were introduced to provide small business operators with access to additional funds for retirement or to grow their business. The package included:

- 15 year exemption
- Retirement exemption
- Active assets 50 per cent reduction, and
- Small business roll-over.

In order to qualify for the concession, a small business must have an annual turnover of is less than \$2 million in a given year.<sup>6</sup> The *Tax Laws Amendment (Small Business) Act 2007*

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5. See: <http://www.ato.gov.au/businesses/content.asp?doc=/content/00106318.htm&pc=001/003/08/9/001/007&mnu=&mfp=&st=&cy=1> viewed 12 May 2009.

6. Explanatory Memorandum, p. 37.

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(the Small Business Act) ‘retained the existing alternative eligibility criteria for accessing the small business CGT concessions for entities that do not meet the new small business entity test but increased the maximum net asset value threshold from \$5 million to \$6 million’.<sup>7</sup>

Now the two different test criteria make it difficult to access the CGT concessions for an affiliate or an entity connected with passive asset structures, or a partnership asset owned by a partner but not treated as a partnership asset as such.

The amendments contained in Schedule 2 to the Bill will allow a taxpayer owning a CGT asset that is used in a business by the taxpayer’s affiliate, or an entity connected with the taxpayer, to access the small business CGT concessions via the \$2 million aggregated turnover test (small business entity test). The amendments will also allow partners who own a CGT asset that is used in a partnership business to access the small business CGT concessions via the \$2 million aggregated turnover test where the CGT asset is not an ‘asset of the partnership’.

### **Basis of policy commitment**

The limitation on small business operators in accessing the concession has been addressed through modifications to the existing law. The schedule also makes a number of minor amendments to refine and clarify aspects of the existing small business CGT concessions provisions so that they operate flexibly and as intended.

### **Pros and cons**

The proposed amendments would essentially address the dichotomy of accessing the small business CGT concessions for passive owners of assets in the small business sector via the small business entity test from 2007–08.

However, the changes may lead to a recalibrating and restructuring of asset ownership in order to access this concession. There may be an incorrect perception that the original small business operators may miss out on accessing the concessions unless they do so.

### **Position of significant interest groups/press commentary**

Treasury released exposure draft legislation on the small business CGT concessions on 14 October 2008.<sup>8</sup> In welcoming the proposed amendments, the Taxation Institute of Australia stated in a submission that:

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7. Explanatory Memorandum, p. 37.

8. Treasury, *Increase access to small business Capital Gains Tax through tax concessions via the \$2 million aggregated turnover test*, media release, 14 October 2008, viewed 8 May 2009, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1411> and the

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While we agree with the general thrust of the Exposure Draft as released, there are two specific issues which we wish to raise:

- We believe that the approach, which operates to deem an entity to be an SBE [small business entity] when they are not otherwise an SBE, is unnecessarily cumbersome and creates an unnecessary fiction (to add to the multitude of fictions already created by the Act). An alternative, and, we believe, simpler approach suggested merely add to the categories of entities prima facie eligible for the CGT SB concessions.
- The deeming of a spouse to be an affiliate should be expressly limited to the situation where the business entity is not otherwise connected with or an affiliate of the asset owner.

In respect of the section 150-40 amendments (regarding “main use”) we understand the need for the amendments, and have suggested a simpler way to achieve the same outcome.<sup>9</sup>

Taxpayers Australia requested in their submission that the provision be retrospective. They stated that:

Taxpayers Australia welcomes the improvements to the small business capital gains tax provisions however we suggest that the proposed legislation lacks clarity being too repetitious and cumbersome.

Taxpayers Australia recommends a redrafting of the exposure draft to improve the grammatical and structural soundness of these provisions.

...

The proposed commencement date in the exposure draft is the day on which the Act receives the Royal Assent. While, we do not favour the operation of retrospective legislation, we acknowledge that certain taxpayers may have acted in accord with the budgetary announcement.

This announcement as noted in Budget Measures Budget Paper No. 2 provided the amendments would be effective from the 2007-08 income year. We request government consider the appropriateness of the commencement dates.<sup>10</sup>

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draft Bill is available at:

[http://www.treasury.gov.au/documents/1411/PDF/Small\\_business\\_CGT\\_concessions\\_-\\_Exposure\\_draft\\_Legislation.pdf](http://www.treasury.gov.au/documents/1411/PDF/Small_business_CGT_concessions_-_Exposure_draft_Legislation.pdf), viewed 12 May 2009.

9. Taxation Institute of Australia, *Exposure Draft: Tax laws amendment (2008 Measures No.7) Bill 2008: CGT concessions for small business*, submission to Treasury, 22 October 2008, p. 1 viewed 8 May 2009, [http://www.treasury.gov.au/documents/1457/PDF/Taxation\\_Institute\\_of\\_Australia.pdf](http://www.treasury.gov.au/documents/1457/PDF/Taxation_Institute_of_Australia.pdf).

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In another submission, Pitcher Partners, a private legal firm, recommended that:<sup>11</sup>

Division 152 [of the Bill] be amended further such that a taxpayer is able to access the small business CGT concessions on the sale of share or units in a company or trust where the company or trust:

- Is a small business entity; or
- Holds an asset or assets used in the business of an entity connected with it or of an affiliate that is a small business entity.

In each of these circumstances, the small business entity test could be applied in the same or a similar manner in which it has been proposed to operate in section 152-46 of the Draft Bill.

## Financial implications

The measure will have an ‘unquantifiable (but minimal to small) cost to revenue over the forward estimates’.<sup>12</sup>

## Main provisions

**Item 1 of Schedule 2** amends existing subparagraph 152-10(1)(c)(iii) of the ITAA 1997 to refer to the partner’s interest in an asset of the partnership. This amendment reflects the intended operation of the provision.

Under proposed **subsections 152-10(1A), 152-10(1B), paragraphs 152-10(1A)(a) and (d), 152-10(1B)(a) to (e), paragraph 152-10(1A)(b), subparagraph 152-10(1)(c)(i) and paragraphs 328-110(1)(a) and 4(a)** of the ITAA 1997, a taxpayer who owns a CGT asset and who does not carry on a business cannot gain access to the small business CGT concessions via the small business entity test even if the asset belongs to the business of an affiliate or an entity connected to or in a partnership with the taxpayer that is a small business entity. **Items 2 and 4 of Schedule 2** address this limitation and insert provisions to cover these arrangements so that a taxpayer who owns a CGT asset (and does not carry

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10. Taxpayers Australia Inc., *Submission – Increase access to the small business capital gains tax concessions via the \$2 million aggregated turnover test*, submission to Treasury, 25 November 2008, pp. 5–7, viewed 8 May 2008, [http://www.treasury.gov.au/documents/1457/PDF/Taxpayers\\_Australia.pdf](http://www.treasury.gov.au/documents/1457/PDF/Taxpayers_Australia.pdf)
  11. Pitcher Partners Advisors Pty Ltd, *Submission on the proposed Small Business CGT (“SBCGT”) concession changes contained in the exposure draft Tax Laws Amendment (2008 Measures No. 7) Bill 2008 (“the Draft Bill”)*, submission to Treasury, 26 November 2008, pp. 3-4, viewed 8 May 2009, [http://www.treasury.gov.au/documents/1457/PDF/Pitcher\\_Partners.pdf](http://www.treasury.gov.au/documents/1457/PDF/Pitcher_Partners.pdf)
  12. Explanatory Memorandum, p. 4.

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on a business other than as a partner in partnership) that is used in a business by the taxpayer's affiliate or an entity connected with the taxpayer is able to access the small business CGT concession via the \$2 million aggregated turnover test in a given income year.

**Item 8** repeals existing paragraphs 152-40(1)(a) and (b) of the ITAA 1997 and substitutes new provisions in their place to make the paragraphs more explicitly consistent with the understanding that a person who owns an asset may carry on a business alone or in partnership, by the person, his or her affiliate, or another entity connected with the asset-owning person.

**Items 11 and 14** repeal subsection 152-40(1A) and insert a rule (contained in **proposed section 152-47**) that treats an individual's spouse or child (under 18 years of age) as an affiliate of the individual for the purposes of determining whether the individual or an entity in which the individual is connected, is eligible for the small business CGT concessions where one entity owns a CGT asset and that asset is used, or held ready for use, in the course of carrying on a business by another entity; or the asset is inherently connected with a business carried on by another entity.

**Item 14** inserts various provisions (proposed sections 152-47, 152-48 and 152-49) into the ITAA 1997 dealing with the treatment of passively held assets. They set out how to treat spouses and children as affiliates of the small business entity. In seeking access to the small business CGT concessions via the small business entity test, the aggregated revenue turnover of the entity would include now, under this provision, turnovers of the affiliates and entities connected with it. They also address how to work out the taxpayer's aggregated turnover for the purpose of applying the concessions to passively held CGT assets and set out how a business asset is to be treated if the business is wound up in the relevant income year.

**Item 25** refines the definition of the term 'net value of the CGT assets' in section 150-20 of the ITAA 1997 to explain that in calculating the net value of an entity's CGT assets one must include any liabilities related to any shares, units or interests held by an affiliate or entity connected with the first entity. Currently, paragraph 152-20(2)(a) of the ITAA 1997 disregards the value of interests in entities connected with the taxpayer or the taxpayer's affiliates to avoid double counting in the net assets calculation, as the assets underlying these interests are already counted. However, this excludes the liabilities relating to such disregarded interests with the effect that such liabilities are never taken into account in the net asset value calculation. Under the revised provision, disadvantages such as the exclusion of liabilities that are indirectly related to assets whose gross value has been included in the net asset calculation, are removed.

**Item 26** modifies section 152-40 of the ITAA 1997 to ensure that all the uses of an asset are considered in determining whether it is an active asset for the purpose of the small business CGT concessions, and remove the focus on the main use of an asset in the course of carrying on the business mentioned in subsection 152-40(1) of the ITAA 1997, and

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focus instead on the main use of the asset by the taxpayer. **Item 27** also inserts proposed paragraphs 152-40(4A)(a) and (b) into the ITAA 1997, to allow exclusion of any personal use of an asset by the taxpayer who owns the asset and any personal use by an individual who is the taxpayer's affiliate from the determination of the main use of the asset. In the affiliating case, the treatment of the affiliate's personal use of the asset will be treated as the taxpayer's use.

**Item 42** states that the amendments in **items 27-29** apply to CGT events that happen or after the day when the Bill receives Royal Assent.

In the case of joint tenants and testamentary trusts, **items 30 to 32** introduce changes to section 152-80 of the ITAA 1997 to extend access to the small business CGT concessions to assets acquired by an individual on the death of a joint tenant and assets that devolve to the trustee of a trust as a result of a will of an individual where the deceased would have been able to access the concessions. **Item 43** stipulates that the changes apply to CGT events happening in the 2006-07 income year or later income years.

**Item 34** of **Schedule 2** inserts **proposed subsection 152-305(1A)** into the ITAA 1997 in order to extend the small business retirement exemption to capital proceeds received in instalments by individuals. **Item 44** provides that this amendment applies to capital proceeds received in the 2007-08 income year and later income years.

**Item 35** inserts **proposed subsection 152-305(4)** into the ITAA 1997 to modify the operation of paragraphs 152-305(1)(a) and (2)(a) of the ITAA 1997 in order to make satisfying the basic conditions for the small business retirement exemption unnecessary if the gain arises from CGT events J5 or J6.<sup>13</sup> **Item 45** stipulates that the amendment applies to CGT events that happened in the 2006-07 income year and later income years.

**Item 36** amends subsection 152-310(3) of the ITAA 1997 by repealing the existing provision and substituting a new provision in its place to remove the duplicate provision for receipt of capital proceeds in instalments by companies and trusts.

**Item 37** of **Schedule 2** amends existing subsection 152-325(1) of the ITAA 1997 to allow a company or trust to make a retirement exemption payment indirectly through one or more interposed entities to a CGT concession stakeholder. **Item 38** modifies existing subsection 152-325(9) by repealing the existing provisions and substituting revised provisions so that there is no tax impact on the interposed entity. Indirect payments are non-assessable non-exempt income, and are not deductible from an interposed entity's assessable income. Payments are neither a dividend nor a frankable distribution. In order

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13. CGT event J5 happens if the taxpayer does not acquire a replacement asset or incur relevant improvement expenditure by the end of the two-year replacement asset period. CGT event J6 happens if the cost of the replacement asset or the amount of the improvement expenditure (or both) is less than the amount of the capital gain originally deferred. See: Explanatory Memorandum, p. 66.

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to reduce uncertainty and complexity for taxpayers utilising the small business retirement exemption, these amendments exclude small business retirement exemption payments made under section 152-325 of the ITAA 1997 from the operation of section 109 and Division 7A of the ITAA 1936 (the 'deemed dividend provisions') and remove any potential conflict between the amendments that treat indirect retirement exemption payments between interposed entities as if they were neither a dividend nor a frankable distribution. **Item 46** of **Schedule 2** spells out the amendments in **items 36 to 38** apply to payments that are made on or after the day on which the Bill receives Royal Assent.

**Item 39** inserts proposed subsection 328-110(6) of the ITAA 1997 to expand the definition of 'small business entity', to provide that a partner in a partnership is not in his or her capacity as a partner, a small business entity for the income year. Thus the small business CGT concessions do not apply.

**Item 47** provides that the amendment in item 39 applies to assessments for the 2007-08 income year and later income years.

**Subitems 41(2)** and **(3)** describe the circumstances when an individual's spouse or child will qualify as affiliates after the repeal of subsection 152-40(1A) of the ITAA 1997.

The small business CGT concessions require taxpayers to make choices. For example, the small business retirement exemption and small business roll-over are available only if a taxpayer chooses to obtain them. **Item 48** of **Schedule 2** provides an extended period of time in which individual taxpayers must choose under Division 152 of the ITAA 1997 to become eligible for the concessions in relation to CGT events happening before the day on which the Bill receives Royal Assent. The entity will have until the latest of: (a) it lodges its income tax return for the income year in which the CGT event happened, (b) 12 months after the Bill receives Royal Assent, or (c) a later day allowed by the Commissioner of Taxation.

## Schedule 3 – Tax Benefits and Capital Gains Tax

### Purpose

**Schedule 3** amends the ITAA 1997 to provide a general exemption from CGT for capital gains or capital losses arising from a right or entitlement to a tax offset, deduction or similar benefit under Australian or foreign law.

### Background

From the happening of a CGT event, a typical taxpayer usually either gains or accrues losses on any capital transaction. Subsection 118-37(1) of the ITAA 1997 currently disregards the capital gain or capital losses from a CGT event as a result of a number of specified events or programs.

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The present amendment makes it explicit that capital gains or capital losses a taxpayer makes from a CGT event as a result of receiving a tax offset, deduction or other similar benefit under Australian or foreign law are to be disregarded.

### **Basis of policy commitment**

As stated in the Explanatory Memorandum, on a highly technical interpretation of the income tax law, taxpayers who have a right to receive the urban water tax offset may incur CGT tax implications on the satisfaction of the right.<sup>14</sup>

The measures introduced through this amendment will put beyond doubt that a capital gain or capital loss would not arise for taxpayers in such circumstances, or in other circumstances where a tax offset, deduction or other taxation benefit is received.

### **Financial implications**

Nil<sup>15</sup>

### **Main Provisions**

As mentioned above, **item 1** of **Schedule 3** amends subsection 118-37(1) of the ITAA 1997 to extend the waiver of CGT tax implications to taxpayers who have the right to receive tax offsets, deductions or other taxation benefits (including land and water rights) under an Australian law, or under the law of a foreign country or part of a foreign country. **Item 2** stipulates that the amendment will apply to relevant CGT events happening in the 2009-10 income year or a later income year.

## **Schedule 4 – National Urban Water and Desalination Plan – (the urban water tax offset)**

### **Purpose**

**Schedule 4** introduces amendments to the ITAA 1997 to provide a refundable tax offset in relation to certain projects approved under the National Urban Water and Desalination Plan.

### **Background**

There is a consensus among the Australian federal, state and territory governments to work cooperatively in order to improve the security of water supplies to major cities. The

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14. Explanatory Memorandum, p. 71.

15. Explanatory Memorandum, p. 4.

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Rudd Government's Water for the Future plan builds on the National Water Initiative by bringing rural and urban water reforms together.

In order to invite investment in diverse water supply options and encourage industry and the community to save and use water, this plan envisages a range of initiatives. The present amendments are part of that scheme.

### **Basis of policy commitment**

Currently the Minister for Climate Change and Water (the Water Minister) is responsible for approving financial assistance under the plan. The present plan will be administered by the Department of the Environment, Water, Heritage and the Arts (the Water Department).

As stated in the Explanatory Memorandum for the Bill, the Government proposed that the financial assistance under the plan be determined through a competitive process and is capped at 10 per cent of eligible up-front project capital costs up to a maximum of \$100 million, with a minimum project outlay of \$30 million. The work must be finished by 30 June 2013 to receive full funding.<sup>16</sup>

Under the amendments contained in this Bill, the assistance package will be covered as a refundable tax offset and will be available from the 2009-10 income year.

### **Position of significant interest groups/press commentary**

On 9 December 2008, the Rudd Government released an exposure draft of the National Urban Water and Desalination plan – urban water tax offset.<sup>17</sup> In a submission to Treasury, the Taxation Institute of Australia raised the following issues:

1. the scope of the ED (exposure draft) and the types of entities to which the urban water tax offset is available is too narrow, in that urban water tax offset is not available to any private sector entity that is not a company and that does not directly carry out the eligible project;
2. the cut-off date for claiming the urban water tax offset is arbitrary and inflexible, effectively meaning that taxpayers will be unable to claim an urban water tax offset for any milestones for the eligible project met, even 1 day, after the end of the 2012-13 income year;
3. the time limits of amending assessment claiming an urban water tax offset are unreasonably long and will leave taxpayers uncertain with respect to their tax position for unreasonably long period of time;

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16. Explanatory Memorandum, pp. 73–74.

17. Treasury, *Exposure draft of the National Urban Water and Desalination Plan – urban water tax offset*, media release, 9 December 2008, viewed 8 May 2009, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1447>

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4. key aspect of the urban water tax offset scheme are to be governed by yet to be released guideline that may be amended or varies after taxpayers have been issued with a certificate under proposed section 402-760, leaving taxpayers with ongoing uncertainty as to their ability to claim urban water tax offsets; and
5. the assumption of obligations in return of the tax offset should be treated as not being taxable for GST and the amount of the offset needs to be calculated on a GST exclusive basis.<sup>18</sup>

### Financial implications

| Year       | 2008-09 | 2009-10 | 2010-11 | 2011-12 |
|------------|---------|---------|---------|---------|
| Amount \$m | -14.0   | -129.0  | -195.0  | -315.0  |

Source: Explanatory Memorandum<sup>19</sup>

### Main Provisions

**Item 2 of Schedule 4** inserts a reference to the urban water tax offset in the list of tax offsets appearing in section 13-1 of the ITAA 1997.

Section 67-25 of the ITAA 1997 currently lists all tax offsets that are subject to the refundable tax offset rules. **Item 3** inserts **proposed section 67-23** setting out the tax offsets that are subject to the refundable tax offset rules whereas **items 4 to 6** amend existing section 67-25 to restrict its operation to refundable tax offsets that are available for franked distributions. The urban water tax offset (available under Subdivision 402-W) is included as a refundable tax offset in the table in **proposed section 67-23**.

**Item 10 of Schedule 4** inserts proposed **Division 402** into the ITAA 1997 setting out tax measures for environment protection expenditure. Division 402 comprises only one subdivision at present, being Subdivision 402-W, dealing with the urban water tax offset. **Proposed section 402-755** states that a company is entitled to a tax offset for an urban water project if the Water Minister certifies that the project is eligible for the tax offset for the year. **Proposed section 402-760** sets out how and when the Water Minister may issue the necessary certificate. **Proposed section 402-765** states that a certificate must specify the amount of the offset, and also that in specifying the amount, the Water Minister must comply with guidelines made under **proposed section 402-780**. If circumstances specified in the guidelines exist, the Water Minister may revoke a certificate according to the

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18. Taxation Institute of Australia, *Exposure draft of the National Urban Water and Desalination Plan – urban water tax offset*, submission to Treasury, 16 January 2009, pp. 1–2, viewed 8 May 2009, [http://www.treasury.gov.au/documents/1481/PDF/Taxation\\_Institute\\_of\\_Australia.pdf](http://www.treasury.gov.au/documents/1481/PDF/Taxation_Institute_of_Australia.pdf)
  19. [Explanatory Memorandum](#), p. 5.

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procedure set out in **proposed section 402-770**. **Proposed section 402-775** provides that a company may apply to the Administrative Appeals Tribunal (AAT) for review of specified decisions made by the Water Minister under Subdivision 402-W, and proposed section 402-780 provides that the Water Minister must, by legislative instrument, make guidelines about issuing and revoking certificates under Subdivision 402-W. Subject to some exceptions, legislative instruments are subject to the parliamentary disallowance procedures set out in the *Legislative Instruments Act 2003*, particularly Part 5.

**Items 11 and 12** amend the dictionary section of the ITAA 1997 (section 995-1) to add the terms ‘Water Department’ and ‘Water Minister’.

**Items 16 to 18** purport to declare that the legislation for this measure will become inoperative once the plan finishes in 2013-14, resulting in the automatic repealing of the provisions with effect from 1 July 2014. A difficulty with these provisions is that the fact of sunseting on 1 July 2014 only appears in a heading and not in any substantive provision, and the importance of this fact may be easily overlooked.

**Item 19** provides for the revocation of certificates, and related matters, after the Subdivision 402-W is repealed. The legislation will specifically preserve the operation of the revocation provisions, as well as the rights of the taxpayer to AAT review, after relevant parts of subdivision 402-W are repealed. In the case of the revocation provisions, these are preserved for 10 years after the relevant certificate was issued.

## **Schedule 5 – Deductible gift recipients**

### **Purpose**

**Schedule 5** introduces amendments to the ITAA 1997 to update the list of the deductible gift recipients (DGRs) to include four new entities and to extend the time period of listing for three organisations currently listed in the ITAA 1997.

### **Background**

The present list of DGRs allows taxpayers who make gifts of \$2 or more to DGRs to claim an income tax deduction. The purpose of such allowances is to assist eligible funds and organisations to conduct social welfare activities through alternative sources and to attract public support for such activities. The Government, through this amended listing, provides for four new community and charity organisations to enjoy the tax deductible status and introduces a specific time limit for three other gift receiving community and charity organisations.

### **Basis of policy commitment**

Recent government initiatives in setting up the Grattan Institute, a public policy think tank based at Melbourne University, and in promoting interfaith interaction through PWR

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Melbourne 2009 limited, prompted the new listing. The amendments will also help Australasian College for Emergency Medicine and ACT Region Crime Stoppers Limited, in getting community support.<sup>20</sup>

### Financial implications

| Year       | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | Total |
|------------|---------|---------|---------|---------|---------|-------|
| Amount \$m | 0.0     | -2.8    | -2.9    | -1.0    | -0.4    | -7.0  |

Source: Explanatory Memorandum<sup>21</sup>

### Main Provisions

**Item 1** adds the Australian College for Emergency Medicine to the list of deductible recipients in subsection 30-20(2) of the ITAA 1997, with gifts made after 2 February 2009 eligible for deduction.

**Item 2** extends the gift deductibility status for Yachad Accelerated Learning Project Limited from 1 July 2008 to 1 July 2009.

**Item 3** adds the Grattan Institute to the list of deductible recipients in subsection 30-40(2) of the ITAA 1997 for gifts made after 4 March 2009 and before 5 March 2011.

**Item 4** adds ACT Region Crime Stoppers Limited to the list of deductible recipients in subsection 30-45(2) for gifts made after 12 February 2009.

**Item 5** extends the gift deductibility status for St George's Cathedral Restoration Fund from 1 January 2008 to 1 January 2011.

**Item 6** extends the gift deductibility status for Bunbury Diocese Cathedral Rebuilding Fund so it applies for gifts made after 18 December 2006 and before 19 December 2010.

**Item 7** adds PWR Melbourne 2009 Limited to the list of deductible recipients in section 30-105 from 2 February 2009 to 1 January 2010.

**Items 8, 9 11 and 12** introduce amendments to the index for the division (section 30-315 of the ITAA 1997) to reflect the above changes.

20. [Explanatory Memorandum](#), p. 81.

21. [Explanatory Memorandum](#), pp. 5–6.

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## Schedule 6 – Australian Business Register

### Purpose

**Part 1 of Schedule 6** amends the *A New Tax System (Australian Business Number) Act 1999* (ABN Act) to improve the integrity and efficiency of the Australian Business Register (ABR).

**Part 2 of Schedule 6** introduces amendments to the ABN Act to allow the Registrar of the ABR to act as the Multi-agency Registration Authority to enable representatives of associated businesses to be identified as related entities for the purpose of communicating electronically with multiple government agencies on behalf of the business(es).

### Background

As stated in the Explanatory Memorandum,

The Registrar [of the ABR] already registers businesses in order for businesses to identify themselves reliably in all their dealings with the Australian Government, including for the purposes of the taxation laws. The existing legislation provides that applications for an ABN must be in a form approved by the Registrar. While the application can require name and address and other information about associates of the business the Registrar cannot always enforce the identification of associates of the business.<sup>22</sup>

Currently, section 14 of the ABN Act requires business entities to update certain details that are outlined in section 25 of that Act, such as address for service of notices. Thus it imposes some limits on the functionality of the Registrar. There is no provision to enable the Registrar to update information about the entity (details including such as addresses) from open sources or from their own resources. Another limitation is the current dispute resolution mechanism. If dissatisfied by any decision of the Registrar, a business's redress is limited to seeking review of the decision in the AAT.

The amendments in **Part 1** relating to the use of 'approved forms' must be read in connection with the use of that term in section 388-50 of the TAA Act. That provides that a return notice, application or other documents is in the 'approved form' only if it is the form approved in writing by the Commissioner of Taxation and contains the requisite information and signatures. The use of an approved form for the purposes of the ABN Act ensures the integrity of the ABR. The Registrar may require the use of an approved form when a person or entity applies for an ABN which requires the identification of the entity and its associates; notifies changes to various details recorded on the ABR in respect of the entity; or requests the cancellation of the entity's ABN.

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22. Explanatory Memorandum, p. 85.

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The Registrar would be authorised to update details on the ABR, when he or she is satisfied that the details entered in relation to an entity are incorrect, and replace them with information that he or she believes to be correct.

The amended provisions (particularly revised section 21 of the ABN Act contained in **item 22 of Schedule 6**) will allow disputes arising out of a range of decisions of the Registrar to be settled through an internal process review with much less cost and delay than the current AAT review process. The internal review process is set out in Part IVC of the TAA 1953. If the internal review process fails, entities can resort to AAT and Federal court processes to redress their grievances.<sup>23</sup>

### Pros and cons

A multi-agency registration authority attributed to the Registrar would meet the demand of complex business dynamics and help smooth out electronic communication with one or more government agencies. The new authority will allow the Registrar to identify representatives of business as part of the registration process.

The Registrar will also be able to use public information and information provided by the third parties on a voluntary basis to update and correct the register in respect of details of representatives, thus removing some constraints in information processing.

This new authority to collect information from third party sources may however, arbitrarily impinge upon the privacy of business entities particularly if third party information is not subject to verification.

### Financial implications

Nil<sup>24</sup>

### Main Provisions

**Item 2 of Schedule 6** repeals subsections 9(2) and (3) of the ABN Act and substitutes revised provisions that require an application for an ABN to be in the 'approved form'. This term is inserted into section 41 of the ABN Act by **item 28**, which defines the term to have the same meaning as in the ITAA 1997. There the term is defined in section 995-1 to have the meaning given by section 388-50 in Schedule 1 to the TAA 1953. The use of a tax file number (TFN) for registration purposes is made voluntary under the approved form provisions, thus maintaining respect for an individual's privacy.

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23. Note: See Part IVC of the TAA 1953 for how the AAT and Federal Court processes operate.

24. Explanatory Memorandum, p. 6.

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**Items 3, 9 and 11 of Schedule 6** reflect the changes in the approved form provisions by amending paragraphs 10(1)(ca), 10(2)(b), 14(2)(b) and 15(3)(b) of the ABN Act. These sections provide that the Registrar must register you if conditions are met (section 10); that you must notify the Registrar of changes to matters set out in the Register (section 14); and that you are obliged to give the Registrar information if requested (section 15).

**Item 11 of Schedule 6** amends the table in subsection 15(1) of the ABN Act in order to enable the Registrar to ask an associate of an entity to give the Registrar information that is relevant to confirming the associate's identity. This also applies to new associates of the entity after registration. This form is subject to the offence provision in section 8C of the TAA 1953, if the associate fails to comply with the request.

**Item 17 of Schedule 6** amends subsection 18(4) of the ABN Act in order to reflect the changes in the approved form provisions allowing the entity to apply for cancellation of its registration in the ABR, replacing the current provision of applying for cancellation of registration in the form approved by the Registrar.

**Item 22 of Schedule 6** amends existing section 21 of the ABN Act in order to allow an entity who is dissatisfied with a decision of the Registrar to object using the provisions set out in Part IVC of the TAA 1953. The decision may involve refusing to register an entity, cancelling a registration refusing to cancel a registration, and other types of decisions set out in **proposed subsection 21(2)**. The provisions adopt the approved form provisions contained in section 388-50 of Schedule 1 to the TAA 1953. The objection rights extend to all of the previous types of decisions for which an entity could seek review of the decision of the Registrar by applying to the AAT.

**Item 23 of Schedule 6** inserts **proposed paragraph 25(2)(aa)** to require the Registrar to enter in the ABR 'details about the entity's associates that were requested in the approved form for registration' in the ABR. Under section 14, an entity has to advise the Registrar about any change to its associates that are entered in the ABR.

In order to maintain the integrity of the ABR, **item 27 of Schedule 6** inserts **proposed section 29A** of the ABN Act to provide a mechanism to be applied if the Registrar is satisfied that details entered in the ABR are incorrect and the Registrar has access to details he or she believes to be correct. Presently the Registrar has only limited ability to update the ABR. The new provision will permit the Registrar to amend the details entered in relation to the entity in the ABR based upon his own information. If the information obtained was subject to secrecy provisions that apply to a government entity, the information would usually remain subject to those secrecy provisions.

**Item 31 of Schedule 6** inserts the definition of the term 'reviewable ABN decision' into section 41 of the ABN Act. It is expressed to have the same meaning as given in section 21 of the ABN Act. The amendment will allow a dissatisfied entity to seek a review of the decision from the AAT or appeal to the Federal Court against the decision. These choices result from the use of the provisions in Part IVC of the TAA 1953 mentioned above. The

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term ‘reviewable ABN decision’ refers to certain decisions made by the Registrar to which an entity has the right to object.

**Item 32** stipulates the amendments in **Schedule 6** commence on Royal Assent.

**Schedule 6** also contains two consequential amendment provisions in order to more appropriately identify the authority for the use of the phrase ‘address shown in the Register’. **Item 33** amends paragraph 57(1)(a) of the *Product Grants and Benefits Administration Act 2000*, by adding the words ‘under subsection 25(2) of the *A New Tax System (Australian Business Number) Act 1999*’ after the phrase ‘address shown in the Register’. **Item 34** amends paragraph 105-140(1)(a) in Schedule 1 to the TAA 1953 where the same words included in the amendment under **item 33** are also inserted into this provision in the TAA 1953.

**Part 2** of **Schedule 6** amends the privacy provisions of the ABN Act. Currently the Registrar acts as the Multi-Agency Registration Authority as he or she already identifies businesses that apply for an ABN (section 10 of the ABN Act), but he or she was not able to use TFNs and other information collected by the Commissioner of Taxation for the purposes of other government agencies. **Item 37** broadens the objects clause of section 3 of the ABN Act to allow the Registrar to register and maintain details of representatives of businesses for the purpose of facilitating electronic dealings by those businesses with government entities, and to use such information to register representatives of businesses.

**Item 39** inserts new **section 9A** into the ABN Act in order to allow an entity already registered in the ABR (or in the process of registering ) to apply to the Registrar to register details about a nominated representative (who must be an individual) to facilitate the applicant’s electronic dealings with government entities.

**Item 40** inserts **proposed section 10A**, which provides that the Registrar must register the applicant’s representative if certain conditions are met. It sets out those conditions, including the requirement that the Registrar must be satisfied that the identity of both the nominating individual and the representative are established. If the proposed representative may also nominate further representatives, the Registrar may request you or the proposed representative to give the Registrar specified information or a specified document in order that the Registrar may be satisfied that the identity of the proposed representative is established: **proposed subsection 10A(2)**.

**Item 42** inserts **proposed section 11A** into the ABN Act to set out how the Registrar registers a representative. The Registrar must enter certain details - the name and email address of the representative, and the date of effect of the registration in the ABR - in relation to the entity. **Item 55**, however, inserts **proposed subsections 25(3) and 25(4)** specifying certain entries that must be entered in the ABR. These provisions add little to proposed section 11A but make it clear what details must be entered in the ABR. The difference is that **proposed subsection 25(4)** also requires the Registrar to enter the details about a representative prescribed in the regulations.

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**Item 43** and **Item 45** amend subsections 13(1) and (2) of the ABN Act to make it clear that when the Registrar refuses or delays to register an individual as a representative of an entity under section 9 or 9A, the process in section 13 governs the steps that may be taken by either party.

**Item 47** of **Schedule 6** amends subsection 15(1) of the ABN Act which sets out a person's obligation to give the Registrar information if requested. In order to preserve the integrity of the ABR, the Registrar has the power to request the entity, or a representative of the entity, to provide the Registrar with information that is relevant to confirming the identity of the representative, or information relevant to the details entered in the ABR in relation to the representative of the entity. Failure to provide such information is subject to the offence provisions contained in section 8C of the TAA 1953.

**Item 48** inserts **proposed subsection 18(1A)** of the ABN Act with a provision authorising the Registrar to cancel the registration of a representative of the entity where she or he is satisfied that one of a number of situations is satisfied regarding the invalidation of the registration.

**Item 49** revises existing paragraph 18(4)(b) of the ABN Act to allow an entity to seek cancellation of the registration of a representative of an entity by completing an application in the approved form and forwarding it to the Registrar.

**Item 50** amends subsection 19(1) of the ABN Act to allow the Registrar to reinstate the registration of a representative in the ABR if the Registrar is satisfied that the registration should not have been cancelled.

**Item 51** repeals existing subsection 21(2) of the ABN Act and substitutes a new provision (including a new table) to reflect the allowable reviewable ABN decisions made under several provisions.

**Item 54** adds an offence provision in **proposed subsection 23(3)** of the ABN Act to discourage a person from identifying himself as being registered under the ABN Act as a representative of an entity, when the person is not the registered representative. The penalty for such offence is two year' imprisonment.

**Item 56** repeals existing subsection 29A(1) and inserts **proposed paragraphs 29A(1)(a) and (b)** into the ABN Act to allow the Registrar to correct the Register if information entered is incorrect and the correct details in relation to an entity or to an entity's representative are available.

**Item 57** inserts proposed paragraph 30(3)(e) into the ABN Act. Section 30 protects the confidentiality of information that an 'entrusted person' has obtained in the course of 'official employment'. The amendment permits the Registrar to disclose the information concerning an individual, who is registered, or has been registered as an entity's representative in the Register, provided the disclosure is for the purpose of facilitating the

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entity's dealings with government entities, or for the purpose of maintaining details in the Register.

## **Schedule 7 – Removing the Greenhouse Challenge Plus Programme condition for fuel tax credits**

### **Purpose**

**Schedule 7** amends the *Fuel Tax Act 2006* (the Fuel Tax Act) to remove the restriction that businesses may not claim more than \$3 million of fuel tax credits in a financial year unless they are a member of the Greenhouse Challenge Plus Programme (GCPP) or another program determined by the Minister for the Environment, Heritage and the Arts (the Environment Minister).

### **Background**

As stated in the Explanatory Memorandum, the GCPP provision in Division 45 of the Fuel Tax Act was intended to encourage large fuel users [to] monitor and take measures to reduce their carbon emissions. It was intended to be integrated into the Government's Carbon Pollution Reduction Scheme but will cease after 30 June 2009 and a suitable replacement program cannot be identified for the purpose of the Fuel Tax Act.<sup>25</sup>

Without removing the GCPP condition from the Fuel Tax Act, business will be unable to claim fuel tax credits in excess of \$3 million in a financial year. Unless amendments are introduced, this situation will essentially put government's policy intent of the fuel tax credit system into serious question.<sup>26</sup>

### **Main Provisions**

In order to help businesses to continue enjoying the entitlements of fuel tax credits, amendments have been introduced to remove Division 45 in its entirety and also other references to Division 45 of the Fuel Tax Act including minor amendments that are required to Schedule 3 of the *Fuel Tax Act (Consequential and Transitional Provisions) Act 2006*.

It is unnecessary to discuss the Main Provisions in detail.

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25. Explanatory Memorandum, p. 99.

26. Explanatory Memorandum, p. 99.

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## Schedule 8 – Government grants for businesses in relation to 2009 Victorian bushfires

### Purpose

**Schedule 8** amends the ITAA 1997 to provide an exemption from tax for the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the Victorian bushfires.

### Background

On 18 February 2009, the Commonwealth and Victorian Governments jointly announced a \$51 million package to assist small businesses and primary producers affected by the Victorian bushfires.<sup>27</sup> The package includes a \$5,000 Clean-up and Restoration Grant, which can be increased up to \$25,000 in cases where the applicant has suffered significant damage.<sup>28</sup>

Although such grants are generally treated as assessable income under the income tax law, the expenditure related to the carrying on of a business funded by using this grant will be generally deductible for taxation purposes.

### Main Provisions

**Item 1** of **Schedule 8** amends the table in section 11-55 of the ITAA 1997 (being a list of non-assessable non-exempt income provisions in the Act) to add the Clean-up and Restoration Grants to the list of payments that are non-assessable non-exempt income.

**Item 2** inserts proposed section 59-50 to provide that the Clean-up and Restoration Grants for primary producers and small businesses are not assessable income and are not 'exempt income' either.

**Items 3** and **4** include a sunset clause to repeal the measures contained in **items 1** and **2** with effect from 1 July 2011.

**Item 5** stipulates that the measures in Schedule 8 will apply to grants paid in the 2008-09 and 2009-10 income years.

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27. Explanatory Memorandum, p. 103.

28. Explanatory Memorandum, p. 103.

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