

2025

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT BILL 2025: MINOR AND TECHNICAL
AMENDMENTS (AUTUMN 2026)

EXPOSURE DRAFT EXPLANATORY MATERIALS

Consultation preamble

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Bill	<i>Treasury Laws Amendment Bill 2025: Minor and technical amendments (Autumn 2026)</i>
CGT	Capital Gains Tax
Commissioner	Commissioner of Taxation
Competition and Consumer Act	<i>Competition and Consumer Act 2010</i>
FRCGW	Foreign Resident Capital Gains Withholding
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMSF	Self-managed super fund
TAA 1953	<i>Taxation Administration Act 1953</i>
Taxation Administration Determination 2017	<i>Taxation Administration (Remedial Power – Foreign Resident Capital Gains Withholding) Determination 2017</i>
TLA (More Competition, Better Prices) Act	<i>Treasury Laws Amendment (More Competition, Better Prices) Act 2022</i>
Treasury	The Department of the Treasury

Chapter 1: *Minor and technical amendments*

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Outline of chapter

- 1.1 Schedule # to the Bill makes minor and technical amendments to legislation within Treasury portfolio. These amendments reflect the Government’s ongoing commitment to the care and maintenance of Treasury laws.
- 1.2 The amendments ensure that Treasury portfolio legislation remains fit for purpose and continues to work for relevant stakeholders and the broader public.

Context of amendments

- 1.3 Minor and technical amendments are routinely made to Treasury portfolio legislation to correct drafting errors and unintended outcomes, make technical changes and improve the quality of Treasury portfolio legislation.
- 1.4 The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which considered ways to improve the quality of tax legislation. It has since been expanded to all Treasury legislation.

Summary of new law

- 1.5 Schedule # of the Bill makes minor and technical amendments across several pieces of legislation with the Treasury portfolio. These changes help keep the laws up to date and working as intended.

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- 1.6 Division 1 of Part 1 amends the TLA (More Competition, Better Prices) Act; Division 2 of Part 1 amends the SIS Act; Division 3 of Part 1 amends the ASIC Act; and Division 1 of Part 2 amends the TAA 1953 and repeals Taxation Administration Determination 2017.
- 1.7 The minor and technical amendments maintain and improve the quality of Treasury legislation by:
- enhancing readability and administrative efficiency; and
 - making other technical changes.

Part 1 – Amendments commencing day after Royal Assent

Division 1 – Treasury Laws Amendment (More Competition, Better Prices) Act 2022

- 1.8 Division 1 of Part 1 of Schedule # of the Bill makes amendments to TLA (More Competition, Better Prices) Act to correct a typographical error.
- 1.9 Schedule 2 to the TLA (More Competition, Better Prices) Act made amendments to update provisions related to unfair contract terms. Item 80 of Schedule 2 to Act provides that the Minister must cause a statutory review to be undertaken, to assess the operation of provisions amended by Schedule 2 of the Act.
- 1.10 Paragraph 80(1)(a) of the Act incorrectly references ‘Part IX’ in Subdivision A of Division 2 of the Competition and Consumer Act, which does not exist. The amendment in this Division updates the incorrect reference to the intended existing provision of ‘Part XI’ of the Competition and Consumer Act.
[Schedule #, item 1, paragraph 80(1)(a) of TLA (More Competition, Better Prices) Act]

1.11 Division 2 – SMSF Public Trustee director appointments

- 1.12 Division 2 of Part 1 of Schedule # to the Bill makes amendments to the SIS Act. These amendments allow Public Trustees, when acting as a legal personal representative, to appoint an agent as a director of a company that is a trustee for a SMSF and authorise that agent to be remunerated for their services.
- 1.13 Subsection 17A(3) of the SIS Act provides alternative conditions a superannuation fund must meet to satisfy the definition of a SMSF when a member of the fund is legally unable to manage the fund. The amendments provide further circumstances that enable a SMSF to remain compliant if a member of the fund cannot manage the fund due a legal disability or death. A Public Trustee acting as a legal personal representative of the member may appoint an agent to continue to manage the fund, as a director of the fund’s trustee company, while still allowing the fund to keep its status as a SMSF.
[Schedule #, items 2 and 3, paragraph 17A(3)(aa) and (ba) of the SIS Act]

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- 1.14 Subsection 17B(2) of the SIS Act provides the circumstances where a trustee of a SMSF may be remunerated for services performed. The amendments allow a director that is an agent appointed by a Public Trustee to be paid for work to manage the fund.
- 1.15 These amendments are necessary to address a gap in the provisions regarding legal personal representatives who are acting on behalf of a member of a self-managed superannuation fund.
- [Schedule #, item 4, subsection 17B(2) of the SIS Act]***

Division 3 – Correcting cross-reference in review of operation provision

- 1.16 Division 3 of Part 1 of Schedule # to the Bill makes amendments to the ASIC Act. The amendments improve readability and clarity of the ASIC Act, helping to avoid misinterpretation.
- 1.17 The amendment made to section 14(1) of the ASIC Act achieves two purposes:
- The amendment clarifies the authority of the Minister, explicitly stating that the Minister may direct the ASIC to investigate a matter by providing written instructions. This is done by ensuring that the commas are used correctly. Overall, the amendment removes any uncertainty about how the Minister’s directions should be communicated.
 - The language in this provision has also been modernised by replacing the gendered phrase ‘he or she’ with the gender-neutral term ‘the Minister’. This is consistent with current legislation drafting practices.
- [Schedule #, item 5, subsection 14(1) of ASIC Act]***
- 1.18 The amendment in subsection 43(3) of the ASIC Act removes an unnecessary comma. This aim to remove ambiguity from the section, making the meaning of the provision clearer.
- [Schedule #, item 6, subsection 43(3) of the ASIC Act]***
- 1.19 Overall, these changes contribute to modernising the language used in the ASIC Act, improving the Act’s readability and interpretation.
- 1.20 These minor and technical amendments support the broader objective of maintaining and properly managing laws within the Treasury portfolio. By making the language clearer and more precise, the amendments reduce legal uncertainty and improve the practical application of the law.

Part 2 – Amendments commencing first quarter after Royal Assent

Division 1 – Tax credits relating to capital proceeds involving foreign residents and taxable Australian property

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- 1.21 Division 1 of Part 2 of Schedule # to this Bill amends sections 18-15, 18-20, and 18-25 in Schedule 1 to the TAA 1953. These amendments ensure that taxpayers are entitled to a tax credit for amounts withheld and paid to the Commissioner, from transactions that Subdivision 14-D applies to, in the same income year that the transaction is assessed for income tax purposes. This means that the instrument issued by the Commissioner under the statutory remedial power to give effect to this outcome is no longer required.
- 1.22 Subdivision 14-D in Schedule 1 to the TAA 1953 contains the FRCGW legislation. The Subdivision requires purchasers of Australian real property, indirect Australian real property interests (as defined in Division 855 of the ITAA 1997), or options or rights to acquire such property or interest, to withhold and pay 15 percent of the purchase price to the Commissioner when the property is acquired from a vendor who is:
- a foreign resident; or
 - an Australian resident taxpayer that does not provide a clearance certificate issued by the Commissioner that confirms their tax residency to the purchaser before settlement.
- 1.23 The entity (usually the vendor but it can be a partner in a partnership, or a beneficiary of a trust where the partnership or the trust is the vendor) is entitled to a tax credit for the amount withheld and paid to the Commissioner following the assessment of their tax liability.
- 1.24 Prior to the amendments, an entity is entitled to claim a tax credit for the amount withheld under the FRCGW legislation in the income year the withheld amount is paid to the Commissioner and for which the entity has had an assessment of income tax. The withheld amount is required to be paid to the Commissioner on or before the day the purchaser becomes the owner of the property. This generally means the withholding amount is paid to the Commissioner on the transaction's settlement date.
- 1.25 This can lead to vendor entities having to lodge income tax returns for different income years where the date the transaction is recognised for income tax purposes and the date the change in ownership occurs straddles two income years. Foreign resident taxpayers may not otherwise need to lodge the second tax return if they have no other Australian source income.
- 1.26 For example, such cases arise where a contract, in which the underlying transaction is subject to capital gains tax and amounts have been withheld under the FRCGW legislation, is entered into in May or June and settles in July or August of the same calendar year. In these cases, the entity will generally be required to lodge two separate Australian income tax returns, being:
- one for the income year in which the tax liability arises for CGT purposes under Division 104 of the ITAA 1997; and

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- one for the subsequent income year, being the year of settlement, in which the entity claims their entitlement to a refund for the amounts withheld and paid to the Commissioner.
- 1.27 This mismatch can lead to financial pressures on the entity, as their tax liability becomes payable in the first income year, but they need to lodge an income tax return in the second income year to recover the withholding credit.
- 1.28 The Taxation Administration Determination 2017 made by the Commissioner under the remedial power under the tax law currently modifies the crediting provisions. The Determination ensures credit entitlements for amounts withheld and paid to the Commissioner under the FRCGW legislation are made available to entities in the same income year in which their tax liability related to the withholding amount is recognised for income tax purposes.
- 1.29 The Taxation Administration Determination 2017 is due to sunset on 1 October 2027. To provide ongoing certainty for taxpayers with transactions that the FRCGW legislation applies to, the amendments give legislative effect to the outcome arising under Taxation Administration Determination 2017.
- 1.30 Subject to the amount withheld having been paid to the Commissioner, the amendments deem that the withholding payment made to the vendor under the FRCGW legislation to have been made at the time the purchaser is taken to acquire the CGT asset.
- 1.31 As the acquisition date of a CGT asset by a purchaser and the disposal date of that asset by the vendor for CGT purposes is generally the same (subject to Division 109 of the ITAA 1997), the entity, partner in a partnership, or beneficiary of a trust is entitled to the tax credit for amounts withheld and paid to the Commissioner in the same income year that the underlying transaction is included in the entity's, partner's or beneficiary's assessment of income tax.
[Schedule #, items 8, 9 and 10, section 18-15 and subsections 18-20(1) and 18-25(1) in Schedule 1 to the TAA 1953]

Example 1.1 Transaction settled in the year of income after the year in which the contract was entered into

Jack, a foreign resident, entered into a contract for the sale of a residential property in Australia in May 2027.

The contract settled in July 2027 and at that time the purchaser paid the amount of withholding under the FRCGW legislation to the Commissioner.

In October 2027, before the due date of their 2026-27 Australian income tax return, Jack lodges their income tax return including as assessable income the capital gain from the sale of the property. Jack is entitled to the tax credit upon issue of their 2026-27 income tax assessment under subsection 1815(3) in Schedule 1 to the TAA 1953 for the amount withheld.

Example 1.2 Transaction settled and income tax return lodged before late payments of withheld amount

Assume the same facts as Example 1.1, except the purchaser did not pay the withheld amount to the Commissioner until November 2027.

Before the due date of their return, Jack lodges their Australian income tax return for 2026-27 in October 2027 and the Commissioner issues an assessment also in October, including the capital gain from the sale of the property. As the amount withheld from the transaction has not been paid to the Commissioner, Jack is not entitled to the tax credit following the making of this assessment.

After the withheld amount has been paid to the Commissioner in November 2027, Jack can make a request for the credit to be given in accordance with subsection 18-15(3) in Schedule 1 to the TAA 1953.

- 1.32 The amendments commence on or after the first day of the quarter after the Bill receives Royal Assent.
[Schedule #, table item 2 of the commencement table]
- 1.33 The amendments apply to withholding payments made on or after commencement of the amendments.
[Schedule #, item 11]
- 1.34 Taxation Administration Determination 2017 is repealed on commencement of the amendments. A savings provision ensures the modifications under the Taxation Administration Determination 2017 continue to apply to withholding payments made before the commencement of the amendments. Therefore, transactions are covered by either the Taxation Administration Determination 2017 or these amendments for all periods since the commencement of the FRCGW legislation.
[Schedule #, items 12 and 13]

Commencement, application, and transitional provisions

- 1.35 Part 1 of Schedule # to the Bill commences the day after Royal Assent.
- The amendments to subsection 14(1) of the ASIC Act applies in relation to a direction given on or after the commencement of those amendments, being the day after Royal Assent.
[Schedule #, item 7, section 348 of the ASIC Act]
- 1.36 Part 2 of Schedule # to the Bill commences on or after the first day of the quarter after Royal Assent.