

EXPOSURE DRAFT



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Superannuation Contributions Tax (Assessment and Collection) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Stuart Robert [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2019.	1 April 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) advance instalment;
- (b) assessment;
- (c) Commissioner;
- (d) contributed amounts;
- (e) late payment penalty;
- (f) member;
- (g) superannuation provider;
- (h) surcharge (defined as an abbreviation for superannuation contributions surcharge).

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Part 1 Preliminary

Section 5

In this instrument:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

Act means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

reporting day means 15 January, 15 April and 15 July in each year.

superannuation fund number means the number assigned to a superannuation provider by the Australian Prudential Regulation Authority.

tax file number has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

Part 2—Prescriptions for specific Act provisions

6 Marriage breakdown—creation of interest or transfer of amount

- (1) Subsection (2) prescribes circumstances:
 - (a) for the purposes of subparagraph 10A(1)(a)(ii) of the Act, in relation to the creation of an interest in a superannuation fund, an approved deposit fund or an RSA for a non-member spouse; and
 - (b) for the purposes of subparagraph 10A(1)(a)(iii) of the Act, in relation to the transfer of an amount to a superannuation fund, an approved deposit fund or an RSA for the benefit of a non-member spouse.
- (2) The circumstances are that the interest is created, or the amount is transferred, in such a way that, because of Division 2.2 of the *Family Law (Superannuation) Regulations 2001*, a later payment in respect of the superannuation interest of the member spouse would not be a splittable payment (within the meaning of Part VIII B of the *Family Law Act 1975*).

Note: Division 2.2 of the *Family Law (Superannuation) Regulations 2001* sets out requirements in relation to the non-member spouse's entitlement under a superannuation agreement, flag lifting agreement or splitting order. If the requirements of the Division have been satisfied, any future payment would not be a splittable payment.

7 Statement by superannuation provider who pays surcharge or advance instalment

- (1) For the purposes of section 35 of the Act, this section prescribes information that is required to be set out in a statement by a superannuation provider who makes a payment to the Commissioner of surcharge or advance instalment on a member's surchargeable contributions for a financial year.

Account reconciliation on payment discharging deferred liability for surcharge

- (2) If the statement relates to the payment of an amount under subsection 16(6) of the Act, the statement must include the following information:
 - (a) the superannuation provider's name, ABN, tax file number and superannuation fund number;
 - (b) the date of the statement;
 - (c) the amount of the payment that is surcharge on the surchargeable contributions of the member;
 - (d) the amount (if any) of the payment that is interest under subsection 16(4) of the Act;
 - (e) the amount (if any) of the payment that is interest under section 21 or 22 of the Act;
 - (f) the total amount of the payment.

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Part 2 Prescriptions for specific Act provisions

Section 8

Assessment variation advice for other members or former members

- (3) The statement must include the information required by subsection (4) if:
- (a) the superannuation provider has received notice of an assessment of surcharge or of a determination of advance instalment on a member or former member's surchargeable contributions; and
 - (b) the superannuation provider is not liable to pay the surcharge or the advance instalment; and
 - (c) the superannuation provider has not included the information in relation to the assessment or determination in a previous statement.
- (4) For the purposes of subsection (3), the following information is required:
- (a) the superannuation provider's name, ABN, tax file number and superannuation fund number;
 - (b) the date of the statement;
 - (c) the name and contact details of an individual who is a contact person for the purposes of the assessment or determination;
 - (d) the identification number given to the assessment or determination by the Commissioner;
 - (e) the amount of surcharge assessed or advance instalment determined for which the superannuation provider is not liable;
 - (f) the reason the superannuation provider is not liable for the surcharge or advance instalment;
 - (g) if any of the contributed amounts in relation to the member have been paid to the member—the matters that would be required under subsection 13(3) of the Act in relation to a payment;
 - (h) if any of the contributed amounts in relation to the member have been transferred to another superannuation provider—the matters that would be required under paragraph 13(4)(a) of the Act in relation to a transfer;
 - (i) if the member has died—the date of death of the member.

8 Meaning of *unfunded defined benefits superannuation scheme*

Purpose of section

- (1) This section declares superannuation schemes for the purposes of the definition of ***unfunded defined benefits superannuation scheme*** in section 43 of the Act.

Schemes under Commonwealth Acts

- (2) A superannuation scheme established by, or operated under, any of the following Acts is declared to be an unfunded defined benefits superannuation scheme:
- (a) *Defence Act 1903*;
 - (b) *Defence Force Retirement and Death Benefits Act 1973*;
 - (c) *Governor-General Act 1974*;
 - (d) *Judges' Pensions Act 1968*;
 - (e) *Military Superannuation and Benefits Act 1991*;
 - (f) *Parliamentary Contributory Superannuation Act 1948*;

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- (g) *Superannuation Act 1976*;
- (h) *Superannuation Act 1990*.

Schemes under New South Wales legislation

- (3) A superannuation scheme established by, or operated under, any of the following laws is declared to be an unfunded defined benefits superannuation scheme:
 - (a) *Judges' Pensions Act 1953* (NSW);
 - (b) *Local Government and Other Authorities (Superannuation) Act 1927* (NSW);
 - (c) *New South Wales Retirement Benefits Act 1972* (NSW);
 - (d) *Parliamentary Contributory Superannuation Act 1971* (NSW);
 - (e) *Police Regulation (Superannuation) Act 1906* (NSW);
 - (f) *State Authorities Non-contributory Superannuation Act 1987* (NSW);
 - (g) *State Authorities Superannuation Act 1987* (NSW);
 - (h) *State Public Service Superannuation Act 1985* (NSW);
 - (i) *Superannuation Act 1916* (NSW);
 - (j) *Superannuation Administration Act 1996* (NSW);
 - (k) *Transport Employees Retirement Benefits Act 1967* (NSW).

Schemes under Victorian legislation

- (4) A superannuation scheme established by, or operated under, any of the following laws is declared to be an unfunded defined benefits superannuation scheme:
 - (a) *Attorney-General and Solicitor-General Act 1972* (Vic.);
 - (b) *Constitution Act 1975* (Vic.);
 - (c) *County Court Act 1958* (Vic.);
 - (d) *Magistrates' Court Act 1989* (Vic.);
 - (e) *Public Prosecutions Act 1994* (Vic.);
 - (f) *State Employees Retirement Benefits Act 1979* (Vic.);
 - (g) *State Superannuation Act 1988* (Vic.);
 - (h) *Supreme Court Act 1986* (Vic.);
 - (i) *Transport Superannuation Act 1988* (Vic.).

Schemes under Queensland legislation

- (5) A superannuation scheme established by, or operated under, any of the following laws is declared to be an unfunded defined benefits superannuation scheme:
 - (a) *Governors (Salary and Pensions) Act 2003* (Qld);
 - (b) *Judges (Pensions and Long Leave) Act 1957* (Qld);
 - (c) *Superannuation (State Public Sector) Act 1990* (Qld).

Schemes under Western Australian legislation

- (6) A superannuation scheme established by, or operated under, any of the following laws is declared to be an unfunded defined benefits superannuation scheme:
 - (a) *Judges' Salaries and Pensions Act 1950* (WA);

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Part 2 Prescriptions for specific Act provisions

Section 8

- (b) *Parliamentary Superannuation Act 1970* (WA);
- (c) *State Superannuation Act 2000* (WA).

Schemes under South Australian legislation

- (7) A superannuation scheme established by, or operated under, any of the following laws is declared to be an unfunded defined benefits superannuation scheme:
 - (a) *Governors' Pensions Act 1976* (SA);
 - (b) *Judges' Pensions Act 1971* (SA);
 - (c) *Parliamentary Superannuation Act 1974* (SA);
 - (d) *Police Superannuation Act 1990* (SA);
 - (e) *Southern State Superannuation Act 2009* (SA);
 - (f) *Superannuation Act 1988* (SA).

Schemes under Tasmanian legislation

- (8) A superannuation scheme established by, or operated under, any of the following laws is declared to be an unfunded defined benefits superannuation scheme:
 - (a) *Judges' Contributory Pensions Act 1968* (Tas.);
 - (b) *Retirement Benefits Act 1993* (Tas.);
 - (c) *Retirement Benefits (Parliamentary Superannuation) Regulations 2012* (Tas.).

Schemes under Australian Capital Territory legislation

- (9) A superannuation scheme established by, or operated under, the *Legislative Assembly (Members' Superannuation) Act 1991* (ACT) is declared to be an unfunded defined benefits superannuation scheme.

Schemes under Northern Territory legislation

- (10) A superannuation scheme established by, or operated under, any of the following laws is declared to be an unfunded defined benefits superannuation scheme:
 - (a) *Administrators Pension Act* (NT);
 - (b) *Legislative Assembly Members' Superannuation Fund Act* (NT);
 - (c) *Superannuation Act* (NT);
 - (d) *Supreme Court (Judges Pensions) Act* (NT).

Schemes under trust deeds

- (11) Each of the following superannuation schemes is declared to be an unfunded defined benefits superannuation scheme:
 - (a) Macquarie University Professional Superannuation Scheme;
 - (b) Northern Territory Police Supplementary Benefit Scheme;
 - (c) Northern Territory Supplementary Superannuation Scheme;
 - (d) The University of Wollongong Professorial Superannuation Scheme;
 - (e) University of New England Professorial Superannuation Fund;
 - (f) University of New South Wales Professorial Superannuation Fund.

Part 3—General information requirements

9 Form of statement to be given to the Commissioner

A statement or other document to be given by a person to the Commissioner under the Act or this instrument, other than a statement under section 13 of the Act, must be in the approved form.

Note: Section 14 of the Act provides for how information contained in a statement under section 13 of the Act is to be given.

10 Change or omission in information given to the Commissioner

- (1) If at any time a superannuation provider becomes aware of a change or omission in any information given to the Commissioner for the purposes of the Act or this instrument, the provider must:
 - (a) inform the Commissioner of the change; or
 - (b) give the omitted information to the Commissioner;as the case requires, unless the provider is reasonably satisfied that the change or omission will not affect an assessment.
- (2) Information required by subsection (1) must be given:
 - (a) if the provider becomes aware of the change or omission at least 30 days before the next reporting day—before that reporting day; or
 - (b) if the provider becomes aware of the change or omission less than 30 days before the next reporting day—before the reporting day after the next reporting day.

11 Giving a tax file number statement to the Commissioner

- (1) If:
 - (a) a superannuation provider has given information to the Commissioner for the purposes of the Act or this instrument in relation to a member; and
 - (b) the member did not quote the member's tax file number to the provider in connection with the operation or possible future operation of the Act before the information was given; and
 - (c) the Commissioner has not informed the provider of the member's tax file number; and
 - (d) the member later quotes the tax file number to the provider in connection with the operation or possible future operation of the Act;the provider must give a statement to the Commissioner that includes the information required by subsection (2).
- (2) For the purposes of subsection (1), the following information is required:
 - (a) the superannuation provider's name, ABN, tax file number and superannuation fund number;
 - (b) the date of the statement;
 - (c) the member's name and date of birth;

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Part 3 General information requirements

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- (d) the address of the member's place of residence or place of business or employment;
 - (e) if the address of the member's place of business or employment is given—the name (and any trading name) of the place of business or employment;
 - (f) the member's tax file number.
- (3) The statement must be given to the Commissioner:
- (a) if the tax file number is quoted to the provider at least 30 days before the next reporting day—before that reporting day; or
 - (b) if the tax file number is quoted to the provider less than 30 days before the next reporting day—before the reporting day after the next reporting day.
- (4) However, if an assessment for the member is given to the provider after the tax file number is quoted but before the day on which the surcharge becomes payable, the provider must give the statement to the Commissioner before the earlier of:
- (a) the day on which the surcharge becomes payable; and
 - (b) the reporting day before which the statement must otherwise be given under subsection (2).

Note: Superannuation providers must comply with any rules relating to tax file number information issued by the Privacy Commissioner under section 17 of the *Privacy Act 1988*.

Part 4—Rounding amounts

12 Surcharge debt accounts—amount of interest to be rounded down

If interest calculated under subsection 16(4) of the Act for a member's account is an amount of whole dollars and an amount of cents, the amount of cents is to be disregarded.

13 Amounts remitted or refunded to be rounded up

If an amount of any of the following that is to be refunded or remitted under the Act is not a multiple of 5 cents, the amount is to be increased to the nearest multiple of 5 cents:

- (a) surcharge;
- (b) advance instalment;
- (c) general interest charge payable under section 21 or 22 of the Act;
- (d) late payment penalty.

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Part 5 Transitional arrangements

Division 1 Transitional matters relating to the repeal of the Superannuation Contributions Tax (Assessment and Collection) Regulations 1997

Section 14

Part 5—Transitional arrangements

Division 1—Transitional matters relating to the repeal of the Superannuation Contributions Tax (Assessment and Collection) Regulations 1997

14 Repealed instrument continues to apply in relation to liabilities and entitlements

Despite the repeal of the *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997*, the provisions of that instrument, except for regulations 20, 16 and 17, continue to apply in relation to:

- (a) calculating or determining amounts (including amounts of contributed amounts, surchargeable contributions and surcharge); and
- (b) the contents of statements under section 13 of the Act.

Note: The topics of regulations 20, 16 and 17 of the repealed instrument are dealt with in sections 6, 12 and 13, respectively, of this instrument.

15 Use of previously approved form

- (1) This section applies to a form for a kind of information to be given by a person to the Commissioner under the Act or the *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997* (the **old Regulations**) that was, immediately before the repeal of the old Regulations, specified or approved by the Commissioner.
- (2) The form is taken to have been approved in writing by the Commissioner, at the commencement of this instrument, for the purposes of a statement or document containing that kind of information to be given by a person to the Commissioner under the Act or this instrument.
- (3) If the form does not require a declaration by any person, then a statement or other document given to the Commissioner in that form does not need to comply with the requirement for a declaration in paragraph 388-50(1)(b) in Schedule 1 to the *Taxation Administration Act 1953* in order to be in the approved form for the purposes of section 9 of this instrument.

Schedule 1—Repeals

Superannuation Contributions Tax (Assessment and Collection) Regulations 1997

1 The whole of the instrument

Repeal the instrument.