

## EXPLANATORY MATERIALS

*Superannuation Contributions Tax (Assessment and Collection) Act 1997;*  
*Superannuation Contributions Tax (Members of Constitutionally Protected*  
*Superannuation Funds) Assessment and Collection Act 1997*

*Superannuation Contributions Tax (Assessment and Collection) Regulations 2019;*  
*Superannuation Contributions Tax (Members of Constitutionally Protected*  
*Superannuation Funds) Assessment and Collection Regulations 2019*

The *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (SCT Act) and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (SCT CPSF Act) provide for the assessment and collection of superannuation contributions surcharge tax (SCT), also referred to as superannuation contributions surcharge. SCT is an additional tax on certain superannuation contributions for superannuation benefits accrued by high income earners that applied to contributions accrued between 1 July 1996 and 30 June 2005.

Section 42 of the SCT Act and section 37 of the SCT CPSF Act provide that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The purpose of the *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019* (the Regulations) is to remake and repeal redundant regulations in the *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997* (the prior Regulations) before they ‘sunset’. While the SCT does not apply to superannuation contributions accrued after 30 June 2005, the SCT Act, the SCT CPSF Act and the prior Regulations are still required as payment of the accrued SCT liabilities relating to some members for superannuation contributions accrued on or before 30 June 2005 have been deferred until, generally, the relevant members receive a superannuation benefit.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are progressively repealed – ‘sunset’. Accordingly, the prior regulations are automatically repealed on 1 April 2019.

The Regulations remake the prior Regulations, omitting redundant provisions, simplifying language and restructure provisions for ease of navigation. The key changes are:

- the removal of provisions that are inoperative for financial years commencing on or after 1 July 2005; and

## EXPOSURE DRAFT

- the replacement of provisions in the prior Regulations setting out in detail the manner and form in which information is required with provisions requiring that the information must be provided in the approved form within the meaning of section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

Other than procedural changes to how information is provided and the removal of redundant provisions, the remaking of the Regulations is not intended to affect the substantive meaning or operation of the remade provisions. Transitional provisions preserve the operation of the prior Regulations in respect of financial years commencing prior to 1 July 2005.

Further details of the Regulations are set out in Attachments A and C respectively.

The SCT Act and the SCT CPSF Act do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 April 2019.

**ATTACHMENT A**

**Details of the *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019***

This attachment sets out further details of the *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019* (Regulations). References to a ‘corresponding provision’ are to the corresponding provision in the *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997* (prior Regulations), as identified by the finding table in [Attachment B](#).

Changes of a minor or machinery nature are generally not specifically identified in this Attachment. These changes include the increased use of headings and references to ‘section’ rather than ‘regulation’ in accordance with current drafting practice. Where changes are made that are intended to apply in a different way to the corresponding provision or require further explanation, they are identified and explained in this Attachment.

**Preliminary provisions**

**Section 1 – Name of Regulations**

This section provides that the title of the Regulations is the *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019*.

**Section 2 – Commencement**

This section provides that the Regulations commence on 1 April 2019.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

**Section 4 – Schedules**

This section provides that the instruments specified in a Schedule to the Regulations is amended or repealed as set out in the relevant Schedule and the other items in the Schedule apply accordingly to their terms.

**Definitions**

The definitions section in section 5 of the Regulations replicates the corresponding provisions in the prior Regulations, but has been updated in accordance with current drafting practice and also to remove definitions that are now redundant. It also includes a reference to the term ‘approved form’ that is used in the Regulations.

The Regulations include a definition of ‘ABN’ as having the same meaning as in section 41 of the *A New Tax System (Australian Business Number) Act 1999*. This replaces the previous defined term ‘Australian Business Number’ to be consistent with terminology used elsewhere in the taxation law.

**Contributed amounts and surchargeable contributions**

The provisions in the prior Regulations dealing with contributed amounts and surchargeable contributions have generally been omitted as they are not relevant for financial years commencing on or after 1 July 2005. Outstanding obligations in

## EXPOSURE DRAFT

relation to financial years ending before 1 July 2005 are preserved by transitional provisions (see below).

However, the Regulations prescribe circumstances relating to surchargeable contributions in which reporting is required as some or all of the amount in an account of a member to which superannuation contributions surcharge applies passes to a spouse as a result of arrangements to discharge obligations under the *Family Law (Superannuation) Regulations 2001*. Such transfers can affect liabilities and entitlements despite occurring on or after 1 July 2005.

Section 6 of the Regulations replicates the corresponding provisions in the prior Regulations but the language has been simplified consistent with current drafting practice.

### **Statements by superannuation providers – additional information**

The Regulations prescribe information that must be included in statements by superannuation providers that make a superannuation contributions surcharge payment or an advance instalment payment.

These provisions replicate the corresponding provisions in the prior Regulations but the language has been simplified consistent with current drafting practice.

In particular, in the prior Regulations superannuation providers were required to include a large range of information listed in Schedules to the prior Regulations. The list has been reduced and integrated into the body of the Regulations. Consistent with modern drafting practice, this avoids prescriptive requirements about information that is required for administration, instead allowing this to be addressed by the ability of the Commissioner of Taxation (Commissioner) to require additional information in the relevant forms.

These changes will not require any changes to existing forms or reporting, but instead merely provide administrative flexibility.

There were a number of provisions in the prior Regulations that dealt with statements that are no longer relevant for income years commencing on or after 1 July 2005. These provisions have not been remade.

### **Unfunded defined benefit superannuation schemes**

The Regulations declare superannuation schemes to be unfunded defined benefits superannuation schemes for the purposes of the SCT Act.

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice, including moving provisions in a Schedule to the prior Regulations into the body of the Regulations. Minor amendments have been made to the list of schemes to reflect changes to the legislation under which particular schemes operate.

### **Information generally**

The Regulations provide that a statement or other document that must be given to the Commissioner under the SCT Act or the Regulations (other than statements under section 13 of the SCT Act) must be in the approved form.

## EXPOSURE DRAFT

This provision replaces several provisions in the prior Regulations that gave the Commissioner specific powers to specify the manner and form in which information needed to be reported. Replacing these provisions with the use of the general approved form rules gives the Commissioner the same powers but in a way that is simpler and more consistent with practice elsewhere in the tax law.

The Regulations also impose requirements where a superannuation provider becomes aware of a change or omission in information previously provided to the Commissioner or is advised by a member of the member's tax file number after providing member information to the Commissioner.

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice.

The Regulations also update the corresponding provisions in the prior Regulations concerning the giving of a tax file number statement to the Commissioner.

These provisions generally replicate the corresponding provisions in the prior Regulations but are updated in accordance with modern drafting practice, including by moving lists of required information into the body of the Regulations after removing redundant information. This includes the requirement in the equivalent provision in the prior Regulations for a superannuation provider to give the Commissioner a tax file number statement given to the provider by a member following the issue by the Commissioner of an assessment to the provider. This is because this requirement is redundant as the Commissioner has ceased making such assessments.

### **Rounding rules**

The Regulations remake the rounding rules for amounts of interest calculated on surcharge debt accounts and amounts of superannuation contributions surcharge, advance instalment, general interest charge and late payment penalty to be refunded or remitted. Broadly, amounts of interest on surcharge debt accounts are rounded down to the nearest whole dollar, and amounts to be remitted or refunded are rounded up to the nearest multiple of 5 cents.

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice. Consistent with the corresponding provisions of the prior regulations, these provisions are made in reliance upon the power to prescribe matters that are necessary and convenient to give effect to the SCT Act rather than a particular power.

### **Transitional rules**

The Regulations contain a transitional provision that provides that despite the repeal of the prior Regulations they generally continue to apply to:

- determine the amount of contributed amounts, surchargeable contributions and superannuation contributions surcharge for financial years ending prior to 1 July 2005; and
- the content of statements required to be given by superannuation providers to the Commissioner under section 13 of the SCT Act in respect of their members

## EXPOSURE DRAFT

for financial years ending prior to 1 July 2005 setting out the member's details and the contributed amounts and surchargeable contributions.

However, the parts of the prior Regulations with ongoing effect have been remade in the Regulations. The transitional rules specify that, in cases where a remade provision applies, the equivalent provision in the prior Regulations does not apply.

The transitional rules also provide that a form in which information was able to be provided to the Commissioner under the prior Regulations immediately prior to their repeal is taken to satisfy the requirements to be an approved form for the purposes of the new provisions.

This ensures that there is no need to make changes or undertake administrative processes to maintain the existing arrangements.

EXPOSURE DRAFT

**ATTACHMENT B**

**FINDING TABLES - *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019***

As a result of some of the changes outlined in Attachment A, it was necessary to renumber the provisions in the Regulations. This explanatory statement includes finding tables to assist in identifying the provisions in the Regulations that correspond to a provision in the prior Regulations that has been rewritten or consolidated, and vice versa.

References to the old law in the table below are to the *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997* unless otherwise specified. References to the new law are to the *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019* unless otherwise specified. In the finding table, in the Old Law column, ‘no equivalent’ means that this is a new provision that has no equivalent in the old law. In the ‘New Law’ column, ‘omitted’ means that the section from the old law has not been remade.

**Finding Table – Old to New Law**

<i>Old Law</i>	<i>New Law</i>
<i>Superannuation Contributions Tax (Assessment and Collection) Regulations 1997</i>	<i>Superannuation Contributions Tax (Assessment and Collection) Regulations 2019</i>
1	1
2	5
2A	8
2E	omitted
2F	omitted
2G	omitted
2H	omitted
2L	omitted
2M	omitted
2N	omitted
2O	6
3	omitted
3A	omitted

## EXPOSURE DRAFT

3B	omitted
3C	omitted
3D	7
3E	7
4	9
5	9
9	10
10	11
12	9
16	12
17	13
25	omitted
Schedule 1	8
Schedule 2	omitted
Schedule 3	7
Schedule 4	7
Schedule 5	omitted
Schedule 6	omitted
Schedule 7	7
Schedule 8	7
Schedule 9	11

EXPOSURE DRAFT

**Finding Table – New to Old Law**

<i>New Law</i>	<i>Old Law</i>
<i>Superannuation Contributions Tax (Assessment and Collection) Regulations 1997</i>	<i>Superannuation Contributions Tax (Assessment and Collection) Regulations 2019</i>
1	1
2	no equivalent
3	no equivalent
4	no equivalent
5	2
6	2O
7	3D, 3E and Schedule 3, 4, 7 and 8
8	2A and Schedule 1
9	4, 5 and 12
10	9
11	10 and Schedule 9
12	16
13	17
14	no equivalent
Schedule 1	no equivalent

**ATTACHMENT C**

**Details of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019***

This attachment sets out further details of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019* (the Regulations). References to a ‘corresponding provision’ are to the corresponding provision in the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997* (prior Regulations), as identified by the finding table in Attachment D.

Changes of a minor or machinery nature are generally not specifically identified in this Attachment. These changes include the increased use of headings and also references to ‘section’ rather than ‘regulation’ in accordance with current drafting practice. Where changes are made that are intended to apply in a different way or require further explanation, they are identified and explained in this Attachment.

**Preliminary provisions**

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 April 2019.

Section 3 – Authority

This section provides that the Regulations are made under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (the SCT CPSF Act).

Section 4 – Schedules

This section provides that the instruments specified in a Schedule to the Regulations is amended or repealed as set out in the relevant Schedule and the other items in the Schedule apply accordingly to its terms.

**Definitions**

The definitions section in section 5 of the Regulations replicates the corresponding provisions in the prior Regulations, but has been updated in accordance with modern drafting practice and also to remove definitions that are now redundant. It also includes a reference to the term ‘approved form’ that is used in the Regulations.

The Regulations include a definition of ‘ABN’ as having the same meaning as in section 41 of the *A New Tax System (Australian Business Number) Act 1999*. This replaces the previous defined term ‘Australian Business Number’ to be consistent with terminology used elsewhere in the taxation law.

## EXPOSURE DRAFT

### **Contributed amounts and surchargeable contributions**

The provisions in the prior Regulations dealing with contributed amounts and surchargeable contributions have generally been omitted as they are no longer relevant for financial years commencing on or after 1 July 2005. Outstanding obligations in relation to financial years commencing before 1 July 2005 are addressed by the transitional provisions (see below).

### **Statements by superannuation providers – additional information**

The Regulations prescribe information in section 6 that must be included in statements by superannuation providers that pay contributed amounts to a member or a person other than a member as a result of a payment (relationship breakdown) split.

In particular, in the prior Regulations superannuation providers were required to include information on a large number of matters listed in Schedules to the prior Regulations. The list of required matters has been reduced and integrated into the body of the Regulations. Consistent with modern drafting practice, this avoids prescriptive requirements about information that is required for administration, instead allowing such details to be addressed through the ability of the Commissioner to require additional information in the relevant forms.

These provisions also remove some requirements included in the corresponding provisions in the prior Regulations as they are already required to be provided under the SCT CPSF Act. The language has been simplified consistent with current drafting practice.

These changes do not require any changes to existing forms or reporting, but instead merely provide administrative flexibility.

There were a number of provisions in the prior Regulations that dealt with statements that are no longer relevant for income years commencing on or after 1 July 2005. These provisions have not been remade.

### **Information generally**

The Regulations provide that a statement or other document that must be given to the Commissioner under the SCT CPSF Act or the Regulations, other than statements under section 12 of the SCT CPSF Act, must be in the approved form.

This provision replaces several provisions in the prior Regulations that gave the Commissioner specific powers to specify the manner and form in which information needed to be reported. Replacing these provisions with the use of the general approved form rules gives the Commissioner the same powers in a way that is simpler and more consistent with practice elsewhere in the tax law.

The Regulations also impose requirements where a superannuation provider becomes aware of a change in or omission from information previously provided to the Commissioner or is advised by a member of the member's tax file number after providing member information to the Commissioner.

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with current drafting practice.

The Regulations also update the corresponding provisions in the prior Regulations concerning the giving of a tax file number statement to the Commissioner. These

## EXPOSURE DRAFT

provisions replicate the corresponding provisions in the prior Regulations but are updated in accordance with current drafting practice.

### **Rounding rules**

The Regulations remake the rounding rules for interest calculated on surcharge debt accounts and amounts of superannuation contributions surcharge, advance instalment, general interest charge or a late payment penalty to be refunded or remitted. Broadly, amounts of interest on surcharge debt accounts are rounded down to the nearest whole dollar, and amounts to be remitted or refunded are rounded up to the nearest multiple of 5 cents.

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with current drafting practice. Consistent with the corresponding provisions of the prior regulations, these provisions are made in reliance upon the power to prescribe matters that are necessary and convenient to give effect to the SCT CPSF Act rather than a particular power.

### **Transitional rules**

The Regulations contain a transitional provision that provides that despite the repeal of the prior Regulations they generally continue to apply to:

- determining the amount of contributed amounts, surchargeable contributions and surcharge for financial years ending prior to 1 July 2005; and
- the contents of statements that were required to be given by superannuation providers to the Commissioner under section 12 of the SCT CPSF Act for financial years that ended prior to 1 July 2005 concerning members' details, contributed amounts and surchargeable contributions.

However, the parts of the prior Regulations with ongoing effect have been remade. The transitional rules specify that where a remade provision applies, the equivalent provisions in the prior Regulations do not apply.

The transitional rules also provide that a form in which information was able to be provided to the Commissioner under the prior Regulations immediately prior to their repeal is taken to satisfy the requirements to be an approved form for the purposes of the new provisions.

This ensures that there is no need to make changes or undertake administrative processes to maintain the existing arrangements.

**ATTACHMENT D****FINDING TABLES - *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019***

As a result of some of the changes outlined in Attachment C, it was necessary to renumber the provisions in the Regulations. The explanatory statement includes finding tables to assist in identifying the provisions in the Regulations that correspond to provisions in the prior Regulations that has been rewritten or consolidated, and vice versa.

References to the old law in the table below are to the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997* unless otherwise specified. References to the new law in the table below are to the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019* unless otherwise specified. In the finding table, in the Old Law column, ‘no equivalent’ means that this is a new provision that has no equivalent in the old law. In the ‘New Law’ column, ‘omitted’ means that the section from the old law has not been remade.

**Finding Table – Old to New Law**

<i>Old Law</i>	<i>New Law</i>
<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997</i>	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019</i>
1	1
2	5
2E	omitted
2F	omitted
2G	omitted
2H	omitted
2L	omitted
2M	omitted
2N	omitted
3	6
4	6

EXPOSURE DRAFT

<i>Old Law</i>	<i>New Law</i>
<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997</i>	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019</i>
5	6
6	7
7	7
10	8
11	9
13	7
17	10
18	11
Schedule 1	omitted
Schedule 2	omitted
Schedule 3	6
Schedule 4	9

**Finding Table – New to Old Law**

<i>New Law</i>	<i>Old Law</i>
<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019</i>	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997</i>
1	1
2	no equivalent
3	no equivalent
4	no equivalent

EXPOSURE DRAFT

<i>New Law</i>	<i>Old Law</i>
5	2
6	3, 4, 5 and Schedule 3
7	6, 7 and 13
8	10
9	11
10	17
11	18
12	no equivalent
Schedule 1	no equivalent
Schedule 2	no equivalent
Schedule 3	6
Schedule 4	9