

EXPOSURE DRAFT

DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Superannuation (Government Co-contribution for Low Income Earners) Act 2003

Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022

Section 55 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022* (the Regulations) is to remake and improve the operation of the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004* (2004 Regulations) before they ‘sunset’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. Legislative instruments generally cease to have effect after 10 years unless their operation is extended such as by remaking the instrument.

Legislative instruments made in the years 2003 and 2004 that were registered on the Federal Register of Legislation on 1 January 2005, such as the 2004 Regulations, are automatically repealed on 1 April 2020. However, a certificate of deferral for 24 months was obtained in the *Legislation (Deferral of Sunsetting—Superannuation (Government Co-contribution for Low Income Earners) Regulations) Certificate 2020* which deferred the sunseting date for the 2004 Regulations until 1 April 2022.

The Regulations remake and improve the 2004 Regulations by omitting redundant provisions, simplifying language and renumbering provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions except in limited cases that are specifically identified in Attachment A. The Regulations follow the structure of the 2004 Regulations.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

Details of the Regulations are set out in Attachment A.

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

The Regulations commence on 1 April 2022.

EXPOSURE DRAFT

ATTACHMENT A

Details of the Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022

This attachment sets out further details of the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022* (the Regulations). All references are to the Regulations unless otherwise stated.

The Regulations improve the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004* (2004 Regulations) by repealing redundant provisions, simplifying language, restructuring and renumbering provisions for ease of navigation. Changes of a minor or machinery nature, such as the increased use of headings and references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practice, are generally not specifically identified in this Attachment. Where changes are made that are intended to apply in a different way or require further explanation, these are identified and explained in this Attachment.

The finding table in Attachment B represents the previous numbering of the 2004 Regulations and the updated numbering in the Regulations.

Part 1 – Preliminary

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022*.

Section 2 – Commencement

The Regulations commence on 1 April 2022.

Section 3 – Authority

The Regulations are made under the *Superannuation (Government Co-contribution for Low Income Earners Act 2003* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Section 5 and 6 – Definitions

Section 5 contains defined expressions used throughout the regulations. A number of definitions have been updated including using a ‘signpost’ for terms that have been defined in the Act. This is done where it improves the comprehensibility of that section. All expressions in section 5 have the same meaning throughout the Regulations, consistent with modern drafting practice.

The addition of the definition of ‘conditions of release’ intends to provide easier reference to the relevant schedules for a complying superannuation fund or retirement savings account for the purposes of the eligible account definition. The

EXPOSURE DRAFT

note references section 6.01B of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and section 4.01B of the *Retirement Savings Accounts Regulations 1997* (RSA Regulations) to ensure temporary residents are captured within the conditions of release definition.

The definition of an ‘eligible account’ has been separated into a new provision to clarify the different conditions for an account with a complying superannuation fund under the SIS Regulations and or a retirement savings account as under the RSA Regulations. Consistent with the 2004 regulations, an eligible account is not an account that provides only death or incapacity benefits.

The purpose of excluding these types of accounts is to identify insurance only accounts. Government co-contributions to insurance accounts would contribute towards the insurance premium rather than the individual’s retirement income. On this basis, an account that exclusively provides terminal medical condition benefits has been included as an account that cannot receive a Government co-contribution. As the intention of the Government co-contribution is to contribute to an individual’s retirement savings, excluding this type of account is necessary to ensure consistent operation.

Part 2 – Co-contributions

Section 7 - How and where a Government co-contribution is to be made

Section 7 details where a Government co-contribution is to be directed depending on an individual’s circumstances. This section is consistent with the 2004 regulations but explicitly specifies that only one item will apply in the event of multiple circumstances being applicable.

For example, under the previous regulations, where a person has died, their account becomes ineligible, giving rise to both items 1 and 5 applying to where the Government co-contribution could be directed. The clarification assures that only one item will be applicable and the Government co-contribution is paid to the person’s legal representative (item 1).

Nominations of eligible accounts made under the 2004 regulations remain eligible under section 16 for the next contribution to be made. The provision ensures that in circumstances where a determination has been made prior to these regulations, that determination continues to have effect until the contribution is made.

Section 8 - Payment dates

Section 8 replicates the existing provision with minor editorial updates. The payment date is 60 days from when the Commissioner determines that a Government co-contribution can be made based on the taxpayer’s information, as outlined in section 14 of the Act. This section also determines the payment date for an underpaid amount.

Section 9 - Information to be given by the Commissioner

The structure of the section 9 has been simplified to incorporate information that was formerly set out in Schedule 3. The provision details information that the Commissioner must provide to the recipient of the Government co-contribution.

EXPOSURE DRAFT

These changes have not altered its scope or any other feature of its substantive operation.

Section 10 – Notices

Schedule 3 to the 2004 Regulations that listed required information to be included in notices has been incorporated into section 10, to be consistent with current drafting practices. This change to how the provision is expressed has not altered the substantive operation of the provision.

Part 3 – Information generally

Section 11 and 12 – Change in information given and giving a tax file number statement to the Commissioner

Section 11 and section 12 rely on the necessary and convenient power in section 55 of the Act. These two provisions in the 2004 Regulations required information to be provided in the approved form. The amendments to these sections allow superannuation providers to write directly to the Commissioner in the event additional information is required. The transitional provision in subsection 16(5) provides continuity for approved forms made under the 2004 Regulations.

The Regulations now allow for superannuation providers to notify the Commissioner in writing where a tax file statement must be given or in the instance of a change in a member's information or if information was not included. The superannuation provider must include all relevant information for the Commissioner to identify the member. Further information may be requested from the provider.

Part 4 – Administration

Section 13 and 14 - Reports to Parliament

Section 13 and 14 replicates the corresponding regulation in the 2004 Regulations with some clarifications made to the way in which the provision is expressed consistent with current drafting practice. Schedule 7 to the 2004 Regulations that specified the ranges of total and taxable income has been incorporated in a simplified description within subsections 13(3), 13(4) and paragraph 14(2)(d) consistent with current drafting practice. These changes to the way the provisions are expressed have not altered the substantive operation of the provisions.

Part 5 – Miscellaneous

Section 15 – Amounts to be paid or rounded up

Section 15 is consistent with the 2004 regulations with minor editorial updates and relies on the necessary and convenient power in section 55 of the Act. The amount of the Government co-contribution is calculated first and then the interest where the final figures is the sum of these two amounts.

EXPOSURE DRAFT

Part 6 – Transitional matters

Section 16 – Application and transitional provisions relating to the commencement of this instrument

Where a form has been approved under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953* for the purposes of a provision of the 2004 Regulations, and the form could be approved for that purpose under this instrument, the form will continue to have effect as if it had been approved under the corresponding provision of this instrument.

This ensures that forms do not have to be re-approved, and that any existing approved forms remain valid. Because the forms that have been approved for those purposes remain approved forms, there is no need for further transitional provisions.

Schedule 1—Repeals

This section repeals the whole of the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004*.

EXPOSURE DRAFT

ATTACHMENT B

FINDING TABLES – *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022*

<i>Old Law</i>	<i>New Law</i>
<i>Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004</i>	<i>Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022</i>
1	1
2	2
3A	3
3B	4
3	5
3C	6
5	7
7	8
8	9
9	10
17	11
18	12
21A	13
21B	14
24	15
25	16