

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy**

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

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

The *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (the Act) provides Government co-contributions to be made towards the superannuation of low-income earners. Section 55 of 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 proposed Regulations support the necessary administration requirements of the Act.

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registered on the Federal Register of Legislation on 1 January 2005, such as the 2004 Regulations, are automatically repealed on 1 April 2020.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 sunset 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.

An Exposure Draft of the Regulations and accompanying Explanatory Materials were released for public consultation from 20 December 2021 to 14 January 2022. Three submissions were received from Australian Institute of Superannuation Association, Chartered Accountants Australia and New Zealand and the Financial Planning

Association of Australia. All three submissions supported the rewrite of the 2004 Regulations.

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.

A Statement of Compatibility with Human Rights is at Attachment C. The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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

This attachment sets out 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 – Schedules**

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 ‘condition 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 definition of an ‘eligible account’ has been separated from the section 5 definitions 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. Building on the 2004 Regulations, an account that only allows benefits to be released due to a member’s death, terminal medical condition or permanent or temporary incapacity will not be an eligible account.

The purpose of excluding these types of accounts is to identify insurance-only accounts. Government co-contributions to insurance-only accounts would contribute towards the insurance premium rather than the individual’s retirement income. As the intention of the Government co-contribution and low-income superannuation offset is to contribute to an individual’s retirement savings, excluding this type of account is necessary to achieve an outcome that meets the intent.

## **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 has been updated to specify the mutual exclusivity of the table items and to remove the ambiguity where multiple accounts have received a statement under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

Subsection 4 has been included to clarify that only accounts that have received a statement under section 390-5 in Schedule 1 to the TAA 1953 will be considered where there are multiple eligible accounts. In instances where multiple eligible accounts have each received a statement under section 390-5 in Schedule 1 to the TAA 1953 then the Commissioner will only consider the most recent statement.

The addition of subsection 5 explicitly specifies that only one item will apply in the event of multiple circumstances being applicable.

For example, under the 2004 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. The provision ensures that in circumstances where a determination has been made prior to these Regulations, that determination continues to have effect.

### **Section 8 - Payment dates**

Section 8 replicates the existing provision with minor clarifications to when the payment is to be made. The payment date of a Government co-contribution is 60 days from when the Commissioner determines that a Government co-contribution can be made under section 13 of the Act based on the taxpayer’s information outlined in section 14 of the Act. 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 the information that the Commissioner must provide to the recipient of the Government co-contribution, based on whether the payment is to an individual or to a trustee or provider. These changes have not altered its scope or any other feature of its substantive operation.

#### Section 10 – Notices

Section 10 specifies the details that must be included in notices of overpayments of Government co-contributions and the proposed recovery. Former Schedule 3 to the 2004 Regulations listed the required information to be included in overpayment notices which has been incorporated into section 10 to be consistent with modern 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 that detail the information to be included in reports for Parliament. Minor clarifications are made to the way in which the provision is expressed to be consistent with current drafting practices. 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 modern drafting practices. 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 that detail how Government co-contribution amounts are to be rounded. The amount of the Government co-contribution is calculated first and then the interest where the final figure is the sum of these two amounts. Section 15 relies on the necessary and convenient power in section 55 of the Act.

## **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*.

## **ATTACHMENT B**

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

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 which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated.

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.

<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
No equivalent	2
No equivalent	3
No equivalent	4
3	5
No equivalent	6
5	7
7	8
8	9
9	10
12	Omitted
17	11
18	12
21A	13
21B	14

<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>
24	15
30	16
31	Omitted
Schedule 2	Incorporated into 9
Schedule 3	Incorporated into 10
Schedule 7	Incorporated into 13



**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

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

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022* (the Regulations) remake and improve the operation of the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004* (2004 Regulations) by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation. The Regulations also make some minor clarifications to several provisions in the repealed 2004 Regulations to ensure that they operate as intended.

These changes are not intended to affect the substantive meaning or operation of the provisions.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.