

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer**

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

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

The *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (SCT CPSF Act) provides for the assessment and collection of superannuation contributions surcharge tax (SCT), also referred to as superannuation contributions surcharge, from members of constitutionally protected superannuation funds. 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 37 of the SCT CPSF Act provides 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 (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 (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 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 has 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The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are progressively repealed – ‘sunset’. Accordingly, the prior Regulations are automatically repealed on 1 April 2019.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 restructuring 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
- 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 [Attachment A](#).

The SCT CPSF 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 5 February 2019 to 15 February 2019. No submissions were received.

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

The Regulations commence on 1 April 2019.

Prior to the making of the Regulations and in accordance with the Office of Best Practice Regulation's (OBPR) Guidance Note on sunseting instruments, the Department of the Treasury self-assessed that the 1997 Regulations were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation on the exposure draft Regulations.

A Statement of Compatibility with Human Rights is at [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 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 also references to ‘section’ rather than ‘regulation’ in accordance with modern 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 instrument 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 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.

## **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 ending 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 of Taxation (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 modern drafting practice.

These changes do not require any revision of 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 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 replicate the corresponding provisions in the prior Regulations but are updated in accordance with modern 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 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 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 B**

### **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 A, 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	omitted
4	omitted

<b><i>Old Law</i></b>	<b><i>New Law</i></b>
<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 and 7
Schedule 4	9

#### **Finding Table – New to Old Law**

<b><i>New Law</i></b>	<b><i>Old Law</i></b>
<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
5	2

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



**Statement of Compatibility with Human Rights**

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

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

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 Legislative Instrument remakes the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997* which sunset on 1 April 2019. The Regulations support the operation of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*. They ensure that superannuation contributions surcharge payable in respect of surchargeable contributions for certain members of constitutionally protected superannuation funds for financial years ending prior to 1 July 2005 can be collected when the amounts are due for payment.

The Regulations prescribe a number of information requirements and a rounding rule for remissions as well as providing transitional rules to ensure that redundant provisions that have been removed continue to have effect for relevant prior financial years.

**Human rights implications**

The amendments made by this Schedule engage the prohibition on arbitrary or unlawful interference with privacy contained in Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Part of the Regulations set out the form and content of certain information that superannuation providers must give to the Commissioner of Taxation (Commissioner), including information about individual members of superannuation funds. This information enables the Commissioner to identify members with an outstanding liability to superannuation contributions tax.

This part of the Regulations engages the prohibition on arbitrary or unlawful interference with privacy to the extent that the amendments authorise the form of the disclosure of personal information relating to an individual. The requirement to provide the information is a longstanding feature of the current law contained in the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

The Regulations are compatible with Article 17 of the ICCPR, as their engagement with the prohibition on interference with privacy will neither be unlawful nor arbitrary. The Regulations are not arbitrary as they achieve a legitimate objective of ensuring that liabilities that are due for superannuation contributions tax can be collected. The Regulations constitute an effective and proportionate means of achieving that objective. The secrecy provisions in the taxation law ensure that information that is provided to the Commissioner must not be subject to unauthorised disclosure and criminal penalties apply to taxation officers that breach these safeguards.

### **Conclusion**

This Schedule is consistent with Article 17 of the ICCPR on the basis that its engagement of the prohibition on interference with privacy is neither unlawful nor arbitrary. To this extent, the Schedule complies with the provisions, aims and objectives of the ICCPR.