

# EXPOSURE DRAFT



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

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley  
Governor-General

By His Excellency's Command

Josh Frydenberg [DRAFT ONLY—NOT FOR SIGNATURE]  
Treasurer

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Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022*.

### 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 2022.	1 April 2022

Note: This table relates only to the provisions of this instrument as originally made.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 (Government Co-contribution for Low Income Earners) Act 2003*.

### 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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) Commissioner;
- (b) complying superannuation fund;
- (c) concessional contributions;
- (d) eligible personal superannuation contribution;
- (e) Government co-contribution;
- (f) low income superannuation tax offset;
- (g) member;
- (h) RSA;

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## Part 1 Preliminary

### Section 6

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- (i) Superannuation Holding Accounts Special Account;
- (j) superannuation provider;
- (k) total income;
- (l) underpaid amount.

In this instrument:

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

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

**condition of release:**

- (a) in relation to a superannuation fund—has the same meaning as in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*; and
- (b) in relation to an RSA—has the same meaning as in Schedule 2 to the *Retirement Savings Accounts Regulations 1997*.

Note 1: See regulation 6.01 of the *Superannuation Industry (Supervision) Regulations 1994* for the definition of **condition of release** that applies in Schedule 1 to those regulations.

Note 2: See regulation 4.01 of the *Retirement Savings Accounts Regulations 1997* for the definition of **condition of release** that applies in Schedule 2 to those regulations.

**eligible account**, for a person: see section 6.

**product identification number** means a number or other unique identification assigned by a superannuation provider to a product offered by the provider.

**reporting day** means 15 January, 15 April or 15 July.

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

## 6 Meaning of *eligible account*

*Complying superannuation fund*

- (1) In this instrument, an account held by a person with a complying superannuation fund is an **eligible account** for the person if:
  - (a) the Commissioner has not been advised that the account will not accept Government co-contributions; and
  - (b) the account has not commenced paying a pension or an annuity; and
  - (c) there is at least one condition of release for the account that is not mentioned in any of the following items of the table in Part 1 of Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*:
    - (i) item 102 (death);
    - (ii) item 102A (terminal medical condition);
    - (iii) item 103 (permanent incapacity);
    - (iv) item 109 (temporary incapacity).

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Preliminary **Part 1**

Section 6

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*RSA*

- (2) In this instrument, an account held by a person with an RSA is an *eligible account* for the person if:
- (a) the Commissioner has not been advised that the account will not accept Government co-contributions; and
  - (b) the account has not commenced paying a pension or an annuity; and
  - (c) there is at least one condition of release for the account that is not mentioned in any of the following items of the table in Schedule 2 to the *Retirement Savings Accounts Regulations 1997*:
    - (i) item 102 (death);
    - (ii) item 102A (terminal medical condition);
    - (iii) item 103 (permanent incapacity);
    - (iv) item 108 (temporary incapacity).

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Part 2 Co-contributions  
Division 1 Administration

Section 7

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## Part 2—Co-contributions

### Division 1—Administration

#### 7 Determining where a Government co-contribution or underpaid amount is to be directed

- (1) For the purposes of subsections 15(3) and 19(6) of the Act and subject to subsection (3) of this section, the Commissioner must determine that a Government co-contribution or an underpaid amount is to be paid in respect of a person in accordance with the following table.

Item	Column 1 Person's circumstances	Column 2 Government co-contribution or underpaid amount is to be paid to:
1	The Commissioner is satisfied that the person is deceased	The person's legal personal representative
2	The Commissioner is satisfied that the person has retired and no longer has an eligible account	The person
3	The person has nominated an eligible account to the Commissioner for the purpose of receiving a Government co-contribution	The eligible account
4	The person has one or more eligible accounts and has not nominated an eligible account to the Commissioner for the purpose of receiving a Government co-contribution	(a) if one, and only one, of the eligible accounts has received a Government co-contribution in the current financial year—that eligible account; or (b) if paragraph (a) does not apply—the eligible account: (i) to which the person has made the greatest amount of eligible personal superannuation contributions; or (ii) with the greatest amount of concessional contributions; in the most recent financial year for which the Commissioner has received a statement in respect of the person under section 390-5 in Schedule 1 to the <i>Taxation Administration Act 1953</i> ; or (c) if paragraphs (a) and (b) do not apply—the person's eligible account with the most recent opened account date; or (d) if paragraphs (a), (b) and (c) do not apply—the person's eligible account with the highest account balance in the



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Item	Column 1 Person's circumstances	Column 2 Government co-contribution or underpaid amount is to be paid to:
5	The person does not have an eligible account	most recent financial year for which the Commissioner has received a statement in respect of the person under section 390-5 in Schedule 1 to the <i>Taxation Administration Act 1953</i> ; or (e) if paragraphs (a), (b), (c) and (d) do not apply—the eligible account determined by the Commissioner
		A new or existing account of the person in the Superannuation Holding Accounts Special Account

- (2) If the person nominates an eligible account for the purposes of item 3 of the table in subsection (1), the nomination has effect until:
- (a) the person nominates another eligible account; or
  - (b) the nominated account stops accepting Government co-contributions for the person; or
  - (c) the nominated account ceases to be an eligible account.
- (3) A paragraph in column 2 of item 4 of the table in subsection (1) does not apply to a payment if the Commissioner is reasonably satisfied that the eligible account mentioned in that paragraph will not or cannot accept the payment.
- (4) For the purposes of paragraphs (b), (c) and (d) in column 2 of item 4 of the table in subsection (1), disregard an eligible account (the **first account**) if:
- (a) the Commissioner has never received a statement under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953* in respect of the person and the first account; or
  - (b) the Commissioner has received a statement under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953* in respect of the person that:
    - (i) relates to any other eligible account of the person; and
    - (ii) relates to a period that ends later than the most recent such statement received by the Commissioner in respect of the person and the first account.
- (5) If 2 or more items of the table in subsection (1) apply to a payment, only the item that is the earliest in the table is to be used.

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## Part 2 Co-contributions

### Division 2 Payment of co-contribution

#### Section 8

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## Division 2—Payment of co-contribution

### 8 Payment dates

- (1) For the purposes of subsection 17(2) of the Act, the payment date for an amount of Government co-contribution is the day 60 days after the Commissioner has sufficient information to determine, under subsection 13(1) of the Act, that the amount is payable.
- (2) For the purposes of subsection 21(2) of the Act, the payment date for an underpaid amount is the day 60 days after the Commissioner has sufficient information to:
  - (a) determine, under subsection 19(4) of the Act, how the amount is to be paid; and
  - (b) make any determination under subsection 19(5) of the Act that the Commissioner is, or would be, required to make as a result of the determination under subsection 19(4) of the Act.

### 9 Information to be given by Commissioner

#### *Payment to person or representative*

- (1) For the purposes of subsection 18(1) of the Act, the Commissioner must give the following information to the person or the person's legal representative:
  - (a) the amount of the Government co-contribution;
  - (b) the income year for which the Government co-contribution is paid;
  - (c) the amount of eligible personal superannuation contributions or concessional contributions (whichever is relevant to the payment) for that income year;
  - (d) the right to apply for a review under section 49 of the Act.

#### *Payment to trustee or provider*

- (2) For the purposes of subsection 18(2) of the Act, the Commissioner must give the following information to the trustee or provider:
  - (a) the following information in relation to the trustee or provider:
    - (i) name;
    - (ii) tax file number;
    - (iii) ABN (if applicable);
    - (iv) superannuation provider product identification number (if applicable);
    - (v) address;
  - (b) the following information in relation to the person:
    - (i) name;
    - (ii) date of birth;
    - (iii) account number;
    - (iv) tax file number (if quoted to the trustee or provider);

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Co-contributions **Part 2**  
Payment of co-contribution **Division 2**

Section 9

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(c) the amount of the Government co-contribution.

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## Part 2 Co-contributions

### Division 3 Overpayments

#### Section 10

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### Division 3—Overpayments

#### 10 Information for recovery of overpayment

##### *Notice of proposed recovery—person or representative*

- (1) For the purposes of item 3 of the table in subsection 24(3) of the Act, the notice given to the person, or the person's legal representative, must include the following information:
  - (a) the person's name;
  - (b) the person's tax file number;
  - (c) the amount of the Government co-contribution;
  - (d) the amount to be recovered;
  - (e) the date by which the amount to be recovered must be paid;
  - (f) the right to apply for a review under section 49 of the Act;
  - (g) the reason that the Government co-contribution was overpaid.

##### *Notice of proposed recovery—superannuation provider*

- (2) For the purposes of item 4 of the table in subsection 24(3) of the Act, the notice given to the superannuation provider must include the following information:
  - (a) the person's name;
  - (b) the person's account number;
  - (c) the person's date of birth;
  - (d) the person's tax file number (if quoted to the superannuation provider);
  - (e) the amount to be recovered;
  - (f) the date by which the amount to be recovered must be paid.

##### *Notice of deduction or debit*

- (3) For the purposes of subsection 24(7) of the Act, the notice given to the person must include the following information:
  - (a) the person's name;
  - (b) the person's tax file number;
  - (c) the amount of the Government co-contribution that included the overpayment;
  - (d) the income year for which that Government co-contribution was paid;
  - (e) the amount of the overpayment;
  - (f) the amount of the deduction or debit;
  - (g) in the case of a deduction from a Government co-contribution—the income year for which that Government co-contribution is or was payable;
  - (h) the right to apply for a review under section 49 of the Act.

## Part 3—Information generally

### 11 Change or omission in information given to the Commissioner

- (1) If, at any time, a superannuation provider becomes aware of a material change or a material omission in any information given to the Commissioner under the Act or this instrument, the provider must:
  - (a) tell the Commissioner of the change; or
  - (b) give the omitted information to the Commissioner.
- (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) in any other case—before the reporting day after the next reporting day.

### 12 Giving a tax file number statement to the Commissioner

- (1) A superannuation provider must give a statement to the Commissioner relating to a member's tax file number if:
  - (a) the provider has given information to the Commissioner in connection with the operation of the Act or this instrument in relation to the 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 or this instrument 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 or this instrument.
- (2) The provider must give the statement to the Commissioner:
  - (a) if the member quotes the tax file number to the provider not less than 30 days before the next reporting day—before that reporting day; or
  - (b) in any other case—before the reporting day after the next reporting day.

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*.

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## Part 4 Administration

### Section 13

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## Part 4—Administration

### 13 Reports for Parliament—prescribed details

- (1) For the purposes of subsection 54(1) of the Act, the following details are prescribed:
  - (a) the number of beneficiaries of Government co-contributions during the quarter;
  - (b) the total of all amounts of Government co-contributions made by the Commissioner during the quarter;
  - (c) the total of all amounts of Government co-contributions recovered during the quarter as overpaid amounts under section 24 of the Act.
- (2) For the purposes of paragraph 54(2)(b) of the Act, the following details are prescribed:
  - (a) the number of beneficiaries of Government co-contributions during the year;
  - (b) the total of all amounts of Government co-contributions made by the Commissioner during the year;
  - (c) the total of all amounts of Government co-contributions recovered during the year as overpaid amounts under section 24 of the Act.
- (3) For the purposes of paragraph 54(2)(c) of the Act, the following ranges of total income are prescribed:
  - (a) less than \$1,000;
  - (b) at least \$1,000 but less than \$2,000;
  - (c) each subsequent range of \$1,000 starting immediately after the previous range of \$1,000, with the final range being the range that includes the higher income threshold for the financial year.

Note: For the *higher income threshold*, see section 10A of the Act.

- (4) For the purposes of paragraph 54(2)(d) of the Act, the following ranges of taxable income are prescribed:
  - (a) less than \$5,000;
  - (b) at least \$5,000 but less than \$10,000;
  - (c) each subsequent range of \$5,000 starting immediately after the previous range of \$5,000, with the final range including any amount of at least \$100,000.

### 14 Reports for Parliament—details about low income superannuation tax offsets

- (1) For the purposes of subsection 12G(1) of the Act, the following details to be included in a report for a quarter are prescribed:
  - (a) the number of beneficiaries of a low income superannuation tax offset during the quarter;

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- (b) the total of all amounts of low income superannuation tax offsets made by the Commissioner during the quarter;
  - (c) the total of all amounts of low income superannuation tax offsets recovered during the quarter as overpaid amounts under section 24 of the Act.
- (2) For the purposes of paragraph 12G(2)(b) of the Act, the following details to be included in a report for a financial year are prescribed:
- (a) the number of beneficiaries of a low income superannuation tax offset made under subsection 12C(1) of the Act during the financial year;
  - (b) the number of beneficiaries of a low income superannuation tax offset made under subsection 12C(2) of the Act during the financial year;
  - (c) the total number of beneficiaries of a low income superannuation tax offset during the financial year;
  - (d) the number of those beneficiaries with an adjusted taxable income, or estimated adjusted taxable income, for the income year that corresponds to the financial year, in each of the following ranges:
    - (i) less than \$1,000;
    - (ii) at least \$1,000 but less than \$2,000;
    - (iii) each subsequent range of \$1,000 starting immediately after the previous range of \$1,000, with the final range being at least \$36,000 but no more than \$37,000;
  - (e) the total of all amounts of low income superannuation tax offsets made under subsection 12C(1) of the Act during the financial year;
  - (f) the total of all amounts of low income superannuation tax offsets made under subsection 12C(2) of the Act during the financial year;
  - (g) the total of all amounts of low income superannuation tax offsets made by the Commissioner during the financial year;
  - (h) the total of all amounts of low income superannuation tax offsets recovered during the financial year as overpaid amounts under section 24 of the Act.
- (3) For the purposes of this section, a person's adjusted taxable income for an income year is worked out in accordance with Schedule 3 to the *A New Tax System (Family Assistance) Act 1999* (disregarding clauses 3 and 3A of that Schedule).

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## Part 5 Miscellaneous

### Section 15

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## Part 5—Miscellaneous

### 15 Amounts paid or repaid to be rounded up

- (1) If any of the following amounts is an amount of whole dollars and an amount of cents, the amount is to be rounded up to the next dollar:
  - (a) an amount of interest worked out under subsection 12(2) of the Act;
  - (b) an amount of interest worked out under subsection 21(3) of the Act;
  - (c) an amount of interest worked out under subsection 22(4) of the Act.
- (2) If an amount to be paid or repaid under the Act by the Commissioner (other than an amount referred to in subsection (1)) is not a multiple of 5 cents, the amount is to be increased to the nearest multiple of 5 cents.



## Part 6—Transitional matters

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

- (1) This section contains application and transitional provisions relating to things done under the *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004* (the **old regulations**) before the commencement of this instrument (the **commencement time**).
- (2) A determination made under subregulation 5(1) of the old regulations and in effect immediately before the commencement time continues in effect for the purposes of section 7 of this instrument (whether or not the determination could be made in the same terms under this instrument).
- (3) A nomination made under item 3 of the table in subregulation 5(1) of the old regulations and in effect immediately before the commencement time continues in effect for the purposes of item 3 of the table in subsection 7(1) of this instrument (whether or not the nomination could be made in the same terms under this instrument).
- (4) Section 10 of this instrument applies to a notice given at or after the commencement time.
- (5) If:
  - (a) immediately before the commencement time, there was a form approved under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953* for the purposes of a provision of the old regulations; and
  - (b) the form could be approved for the purposes of a corresponding provision of this instrument;the form has effect for the purposes of this instrument as if it had been approved for the purposes of the corresponding provision of this instrument.

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Schedule 1 Repeals

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## Schedule 1—Repeals

### *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004*

#### **1 The whole of the instrument**

Repeal the instrument.