

Judges' Pensions Regulations 1998 1998 No. 25

EXPLANATORY STATEMENT

STATUTORY RULES 1998 NO. 25

Issued by the Authority of the Attorney-General

Judges' Pensions Act 1968

Judges' Pensions Regulations 1998

Section 21 of the *Judges' Pensions Act 1968* (the Pensions 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 *Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997* received Royal Assent on 7 December 1997. Schedule 5 to that Act amends the Pensions Act to apply the superannuation contributions surcharge to federal judges appointed from that date and others covered by the Pensions Act.

Subsection 19(1) of the Pensions Act provides that, for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (the Assessment Act), the amount of a judge's surchargeable contributions for a financial year is worked out by multiplying his or her annual salary by the applicable notional surchargeable contributions factor. Subsection 19(2) provides that the factors that are to apply to a judge may be prescribed by regulation.

The purpose of the proposed regulations is to prescribe the notional surchargeable contribution factors to be used in the determination of the annual surchargeable contribution for members of the Judges' Pensions Scheme. The surchargeable contribution is "notional" in that it relates to the liability of the Scheme in respect of each judge and forms the basis for calculating each judge's surcharge debt by the Australian Taxation Office. However, the reduction in any individual judge's pension to reflect the rate of individual surcharge is as set out in section 613 of the Pensions Act

The factors in the Regulations have been provided by the Australian Government Actuary.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 is the definition section.

Subregulation 3(1) provides that the notional surchargeable contributions factor that applies to a male judge for a financial year is 1 the percentage set out in Schedule 1 to the Regulations found by reference to the judge's period of service and age at the end of the financial year. Subregulation 3(2) similarly provides for female judges by reference to Schedule 2.

The note following regulation 3 notes that the Regulations have effect subject to the application provision in item 21 of Schedule 5 to the *Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997*. That provision provides that the amendments to the Pensions Act contained in Schedule 5 do not apply to a Justice or Judge of a federal court

appointed before the commencement of the Schedule. Accordingly, the Regulations do not apply to Justices or Judges of federal courts appointed before 7 December 1997.