

EXPLANATORY STATEMENT

FAMILY LAW (SUPERANNUATION) (INTEREST RATE FOR ADJUSTMENT PERIOD) DETERMINATION 2009

ISSUED BY AUTHORITY OF THE AUSTRALIAN GOVERNMENT ACTUARY

In this instrument the Australian Government Actuary makes a number of determinations under regulation 45D of the *Family Law (Superannuation) Regulations 2001* (the FLS Regulations) relating to the adjustment of entitlements of divorced or separated spouses under certain orders or agreements splitting particular kinds of future superannuation benefits made in property settlements under the *Family Law Act 1975* (the Act).

The determinations relate to orders or agreements providing for a base amount split of future superannuation benefits, one of two kinds of splits that can be made under the Act of most types of superannuation, payable in respect of a defined benefit superannuation interest or an interest in a self managed superannuation fund.

Under a base amount split, a base amount is:

- allocated by the court before making an order; or
- specified in the agreement by the spouses;

and is then adjusted, on an annual basis (or for a part year, where necessary), until:

- superannuation benefits are payable to the spouse – the member spouse – who has the superannuation interest; or
- the member spouse's interest is split, at some earlier time, under the *Superannuation Industry (Supervision) Regulations 1994*, the *Retirement Savings Regulations 1997*, or pursuant to the governing rules of the relevant superannuation fund or scheme in accordance with regulation 14G of the FLS Regulations.

The entitlement of the non-member spouse for whose benefit the order or agreement has been made, when any of those events occurs, is linked to the adjusted base amount under the order or agreement at that time.

A defined benefit superannuation interest is one, essentially, where the benefits payable in respect of the interest are linked to the member's period of membership and salary on cessation of membership of the fund or scheme in which the interest is held.

A self managed superannuation fund is a fund with fewer than 5 members that satisfies certain conditions under the *Superannuation Industry (Supervision) Act 1993*.

Where the interest that is subject to an order or agreement is a defined benefit superannuation interest or an interest in a self managed superannuation fund, regulation 45D of the FLS Regulations provides for the Australian Government Actuary to determine:

- the interest rate for the adjustment of a base amount for any 12 month adjustment period that is a financial year (subregulation 45D(3));
- the method by which the interest rate is to be calculated for any adjustment period that is less than 12 months that begins and ends within a financial year (subregulation 45D(4)); and
- the method by which the interest rate is to be calculated for any adjustment period that begins in one financial year and ends in the following financial year (subregulation 45D(6)).

In paragraph (a) of the instrument, the Australian Government Actuary determines, under subregulation 45D(3) of the FLS Regulations, that the interest rate is 0.082 where the adjustment period is the financial year beginning on 1 July 2009. This rate is 2.5 percentage points above the percentage change in the original estimate of full-time adult ordinary times earnings for all persons in Australia as published by the Australian Bureau of Statistics for the year ending with the February 2009 quarter.

In paragraph (b) and Schedule 1 of the instrument, the Australian Government Actuary determines, under subregulation 45D(4) of the FLS Regulations, the method for calculating the interest rate where the adjustment period is less than 12 months and begins and ends in the 2009/2010 financial year. The method provides for the calculation of a rate by reference to a rate that is 2.5 percentage points above the percentage change in the original estimate of full-time adult ordinary times earnings for all persons in Australia as published by the Australian Bureau of Statistics for the year ending with the February 2009 quarter.

In paragraph (c) and Schedule 2 of the instrument, the Australian Government Actuary determines, under subregulation 45D(6) of the FLS Regulations, the method for calculating the interest rate where the adjustment period is exactly 12 months and begins in the 2008/2009 financial year and ends in the 2009/2010 financial year.

In paragraph (d) and Schedule 3 of the instrument, the Australian Government Actuary determines, under subregulation 45D(6) of the FLS Regulations, the method for calculating the interest rate where the adjustment period is less than 12 months and begins in the 2008/2009 financial year and ends in the 2009/2010 financial year.

The methods determined under subregulation 45D(6) of the FLS Regulations provide for the calculation of rates by reference to the following rates:

- a rate that is 2.5 percentage points above the percentage change in the original estimate of full-time adult ordinary time earnings for all persons in Australia as published by the Australian Bureau of Statistics for the year ending with the February 2008 quarter; and

- a rate that is 2.5 percentage points above the percentage change in the original estimate of full-time adult ordinary time earnings for all persons in Australia as published by the Australian Bureau of Statistics for the year ending with the February 2009 quarter.

In November 2008, the Australian Bureau of Statistics released revised estimates of average weekly earnings. The retrospective revisions affected the original estimate average weekly earnings series which are used in calculating the interest rates for family law purposes. In particular, the annual percentage change in full-time adult ordinary time earnings to February 2008 was increased from 4.8 to 5.2. This revision would potentially affect both the 2008 and 2009 Determinations. Given the administrative cost and confusion that a retrospective adjustment to the 2008 Determination would cause, there is no intention to revise the interest rate determined for the 2008-09 financial year.

Consultation on the content of the instrument was undertaken under section 17 of the *Legislative Instruments Act 2003* with the Attorney-General's Department by way of exchange of correspondence and discussions.