

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 97**

#### *Family Law Act 1975*

#### *Family Law (Superannuation) Amendment Regulation 2012 (No. 1)*

Subsection 125(1) of the *Family Law Act 1975* (Family Law Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Family Law Act, prescribing all matters required or permitted by the Family Law Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Family Law Act. Subsection 90MT(3) of the Family Law Act also provides that if regulations provide for the determination of an amount in relation to a superannuation interest, the court must determine the amount in accordance with the regulations.

The *Family Law (Superannuation) Regulations 2001* (the Principal Regulations) have been prescribed to give effect to the distribution of superannuation interests under Part VIII B of the Family Law Act.

In 2011, the Australian Government passed the *Governance of Australian Government Superannuation Schemes Act 2011* (the Schemes Act), the *ComSuper Act 2011* and the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* (the Transitional Act). This legislation consolidated the existing trustee boards of the main civilian and military superannuation schemes into a single administration board. The Schemes Act replaces the Defence Force Retirement and Death Benefits Authority (the Authority) with the Commonwealth Superannuation Corporation (CSC) as administrator of the Defence Force Retirement and Death Benefits Scheme (the Scheme).

This regulation ensures that the Principal Regulations identify the appropriate body as trustee of the Scheme for the purposes of the Family Law Act. Subregulation 10(5B) of the Principal Regulations is amended to remove reference to the Authority and to prescribe the CSC as trustee of the Scheme.

Provision was made under Schedule 2, Part 3, section 9 of the Transitional Act that any reference to the Authority contained in an instrument in force immediately before commencement of the Schemes Act will be treated as if it is a reference to the CSC. In addition, Schedule 2, Part 7, section 20 of the Transitional Act provides that a provision that amends a reference to the Authority can be expressed to have commenced from the day that the Transitional Act commenced, being 1 July 2011. This regulation will be taken to have commenced from 1 July 2011.

Section 90MD of the Family Law Act provides that a definition of ‘trustee’, in part, means a person who is identified in the regulations as the trustee of the superannuation plan for the purposes of the definition in the Family Law Act. Regulation 10 of the Principal Regulations has been amended to identify the CSC as the trustee for the Scheme.

Subparagraph 45D(5)(b)(i) of the Principal Regulations have also been amended to clarify that this subparagraph applies to a period of 12 months that is not a financial year.

The Department of Finance and Deregulation requested that these amendments be made. Due to the technical nature of these amendments no further consultation has been undertaken.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the regulation are as follows:

#### Section 1 - Name of regulation

This section provides that the title of the regulation is the *Family Law (Superannuation) Amendment Regulation 2012 (No. 1)*.

#### Section 2 - Commencement

Subsection 2(a) provides for sections 1, 2 and 3 and Schedule 1 of the regulation to commence on 1 July 2011. Subsections 2(b) provides for Schedule 2 of the regulation to commence on the day after registration of the regulation.

#### Section 3 - Amendment of *Family Law (Superannuation) Regulations 2001*

This section provides that the *Family Law (Superannuation) Regulations 2001* (the Principal Regulations) are amended as set out in Schedules 1 and 2 of the regulation.

#### Schedule 1 - Amendments taken to have commenced on 1 July 2011

##### **Item [1]: Subregulation 10(5B)**

This section replaces subregulation 10(5B) of the Principal Regulations with a new subregulation 10(5B). The effect of the new subsection is to prescribe the Commonwealth Superannuation Corporation (CSC) as the trustee of the Defence Force Retirement and Death Benefits Scheme (the Scheme). The section removes reference to the previous trustee of the Scheme, the Defence Force Retirement and Death Benefits Authority.

##### **Item [2]: Subregulation 10(6)**

This section inserts a definition of CSC by reference to section 4 of the *Governance of the Australian Government Superannuation Schemes Act 2011*.

#### Schedule 2 - Amendment commencing day after registration

##### **Item [1]: Subparagraph 45D(5)(b)(i)**

This section replaces subparagraph 45D(5)(b)(i) of the Principal Regulations with a new subparagraph 45D(5)(b)(i). The effect of this new subparagraph is to clarify that the adjustment period is a period of 12 months that is not a financial year.

## **Statement of Compatibility with Human Rights**

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

### **Family Law (Superannuation) Amendment Regulation 2012 (No. 1)**

This regulation 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 Regulation**

The purpose of the regulation is to reflect changes to some military and civilian superannuation schemes and their administration made by certain Acts in the *Family Law (Superannuation) Regulations 2001* (the Principal Regulations).

The *Governance of Australian Government Superannuation Schemes Act 2011* (the Schemes Act), the *ComSuper Act 2011* and the *Superannuation Legislation (Consequential Amendments and Transition) Provisions Act 2011* (the Transitional Act) consolidated the existing trustee boards of the main civilian and military superannuation schemes into a single administration board, the Commonwealth Superannuation Corporation (CSC). The regulation will amend the Principal Regulations to reflect this change.

The Principal Regulations will be amended to ensure that the appropriate body is prescribed as trustee of the Defence Force Retirement and Death Benefits Scheme for the purposes of the *Family Law Act 1975* (Family Law Act). The amendments will remove reference to the Defence Force Retirement and Death Benefits Authority in the Principal Regulations and prescribe the CSC as trustee of the Scheme.

The regulation will also clarify that the period of 12 months that is set out in subparagraph 45D(5)(b)(i) is intended to refer to adjustment periods that are not a financial year.

#### **Human rights implications**

The regulation does not engage any of the applicable rights and freedoms.

#### **Conclusion**

The regulation is compatible with human rights as it does not raise any human rights issues.