

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 151, 2015**

Issued by the authority of the Minister for Finance

*Judges' Pensions Act 1968*

*Judges' Pensions Amendment (Age Factors) Regulation 2015*

#### **Purpose of the Regulation**

The *Judges' Pensions Act 1968* (Judges' Act) establishes the Judges' Pensions Scheme (JPS) which provides superannuation benefits for office holders who fall under the definition of "Judge" in that Act.

Judges who commenced service after 20 August 1996 and before 1 July 2005 are subject to the superannuation contributions surcharge (surcharge), which is an additional tax on certain contributions made to a superannuation fund between those dates. The Judges' Act gives retiring Judges the option of making a payment from their JPS entitlements to discharge their surcharge liability and accepting a permanent reduction in their JPS pension. Age factors specified in regulations made under the Judges' Act are used to work out this reduction.

The *Judges' Pensions Amendment (Age Factors) Regulation 2015* (the Regulation) amends the *Judges' Pensions Regulations 1998* to provide for updated age factors. These age factors were prepared by the Australian Government Actuary (AGA) and reflect assumptions regarding life expectancies which were adopted by the AGA in the 2014 Long Term Cost Report for the JPS.

Increasing life expectancies mean that Judges' surcharge debts will be discharged over a longer period of time, so affected Judges will receive marginally higher pension payments. The effect of this change will be minimal due to the small number of remaining Judges who have a surcharge debt.

#### **Authority for the Regulation**

Section 21 of the Judges' 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 authority to prescribe the age factors in the regulations derives from subsection 6C(4) of the Judges' Act. The authority to amend the age factors derives from subsection 33(3) of the *Acts Interpretation Act 1901* which provides, among other things, that where an Act confers power to make regulations the power shall, unless the contrary intention appears, be construed as including a power, exercisable in like manner, to amend the regulations. No such contrary intention appears in the Judges' Act.

The Judges' Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

### Legislative Instruments Act 2003

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). However, the Regulation is exempted from sunseting by item 21 of the table in Schedule 3 of the *Legislative Instruments Regulations 2004*.

### Consultation

Consistent with paragraph 18(2)(a) of the LIA, consultation was considered unnecessary as the Regulation is of a minor or machinery nature and does not substantially alter existing arrangements.

### Regulatory impact analysis

A Regulation Impact Statement (RIS) was not prepared for the Regulation because the amendments only affect members of the JPS and will have a nil or minor impact on business, community organisations and individuals. The Office of Best Practice Regulation (OBPR) has confirmed that a RIS is not required (OBPR ref. 18367).

### Other issues

Details of the amendments are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Regulation commences on the day after it is registered.

**Details of the *Judges' Pensions Amendment (Age Factors) Regulation 2015***

**Section 1 – Name of Regulation**

This section provides that the name of the Regulation is the *Judges' Pensions Amendment (Age Factors) Regulation 2015* (the Regulation).

**Section 2 – Commencement**

This section provides that the Regulation will commence the day after it is registered.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Judges' Pensions Act 1968* (Judges' Act).

**Section 4 – Schedule(s)**

This section provides for the operation of Schedule 1 to the Regulation, which amends the *Judges' Pensions Regulations 1998*.

**Schedule 1 – Amendments**

Item 1 repeals Schedule 1A of the *Judges' Pensions Regulations 1998* and substitutes a new Schedule 1A. The new Schedule 1A includes a table which specifies the updated factors to be used for the purposes of regulation 3A.

- Regulation 3A provides a formula which is used to work out the age factor which applies to a Judge.
- This age factor is then used in section 6C of the Judges' Act to work out the reduction in the Judge's pension in order to discharge the Judge's surcharge liability.

**Statement of Compatibility with Human Rights**

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

**Judges' Pensions Amendment (Age Factors) Regulation 2015**

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**

This Legislative Instrument updates the age factors used to work out the reduction in a Judge's pension in order to discharge the Judge's superannuation contributions surcharge liability.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann**

**Minister for Finance**