

## EXPLANATORY STATEMENT

### FAMILY LAW (SUPERANNUATION) (INTEREST RATE FOR ADJUSTMENT PERIOD) DETERMINATION 2017

#### ISSUED BY AUTHORITY OF THE AUSTRALIAN GOVERNMENT ACTUARY

1. In this instrument the Australian Government Actuary made a number of determinations under regulation 45D of the *Family Law (Superannuation) Regulations 2001* (FLS Regulations). The determinations relate to the adjustment of superannuation entitlements of separated and divorced spouses, and of separated de facto couples (except in Western Australia). The entitlements are provided under certain orders or agreements that split particular kinds of future superannuation benefits made in property settlements under the *Family Law Act 1975* (Family Law 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 Family Law Act of most types of superannuation), payable in respect of a defined benefit superannuation interest or an interest in a self-managed superannuation fund.
2. 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 who has the superannuation interest ('the member spouse'); 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.
3. 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.
4. A defined benefit superannuation interest is one which satisfies the definition at regulation 5 of the FLS Regulations. It is typically one 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.
5. A self managed superannuation fund is a fund with fewer than 5 members that satisfies certain conditions under the *Superannuation Industry (Supervision) Act 1993*.
6. 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)).

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

8. The Determination commenced on 1 July 2017.

9. The Determination is a legislative instrument for the purposes of the LA.

10. Details of the Determination are as follows:

#### ***Section 1 — Name of Determination***

11. Section 1 provides that the title of the instrument is the *Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2017*.

#### ***Section 2 — Commencement***

12. Section 2 provides that the instrument commences on 1 July 2017.

#### ***Section 3 – Authority***

13. Section 3 provides that the instrument is made under regulation 45D of the *Family Law (Superannuation) Regulations 2001* (the FLS Regulations).

#### ***Section 4 — Definition***

14. Section 4 provides that in this instrument where the term ***regulations*** is used it means the FLS Regulations.

#### ***Section 5 — Adjustment period – financial year***

15. In section 5 of the instrument, the Australian Government Actuary determines, under subregulation 45D(3) of the FLS Regulations, that the interest rate is 0.047 where the adjustment period is the financial year beginning on 1 July 2017. This rate 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 November 2016 reference period.

#### ***Section 6 — Adjustment period – less than 12 months within financial year***

16. In section 6 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 financial year beginning on 1 July 2017. 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 time earnings for all persons in Australia as published by the Australian Bureau of Statistics for the year ending with the November 2016 reference period.

#### ***Section 7 — Adjustment period – 12 months not within financial year***

17. In section 7 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 financial year beginning on 1 July 2016 and ends in the financial year beginning on 1 July 2017.

***Section 8 — Adjustment period – less than 12 months not within financial year***

18. In section 8 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 financial year beginning on 1 July 2016 and ends in the financial year beginning on 1 July 2017.

19. 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 November 2015 reference period. This rate applies for that part of the adjustment period that is in the financial year beginning on 1 July 2016; 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 November 2016 reference period. This rate applies for that part of the adjustment period that is in the financial year beginning on 1 July 2017.

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

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

### **Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2017**

This Disallowable 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 Disallowable Legislative Instrument**

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, or of separated de facto couples (except in Western Australia), under certain order or agreements splitting particular kinds of future superannuation benefits made in property settlements under the *Family Law Act 1975* (Family Law 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 Family Law Act of most types of superannuation, payable in respect of a defined benefit superannuation interest or an interest in a self-managed superannuation fund.

#### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms. It does not change the substance of the legislation as its effect is only administrative.

#### **Conclusion**

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

**Peter Colin Martin**