

EXPLANATORY STATEMENT

Issued by the Authority of the Attorney-General

Family Law (Superannuation) (Provision of Information — NSW State Authorities Non-contributory Superannuation Scheme) Amendment Determination 2019

Introduction

This instrument is made under subregulation 64(7) of the *Family Law (Superannuation) Regulations 2001* (FLS Regulations) and is a legislative instrument under section 8 of the *Legislation Act 2003*.

Outline

The *State Authorities Non-contributory Superannuation Act 1987* (NSW) (SANCS Act) was amended by the *State Authorities Non-contributory Superannuation Amendment Act 2013* (NSW) (SANCS Amendment Act) to require NSW Public Sector Employers to pay an additional monthly superannuation contribution to employees in certain NSW public sector superannuation schemes.

The SANCS Amendment Act requires that an additional employer contributions account (AEC account) be established for each eligible member for the purposes of holding the new contribution.

Part VIII B of the *Family Law Act 1975* (Family Law Act) provides for the division of superannuation between married and de facto couples in the event of a relationship breakdown. NSW SANCS Scheme interests are superannuation interests as defined by section 90MD of the Family Law Act, and are subject to the superannuation splitting regime under the Family Law Act.

To facilitate superannuation splitting, the FLS Regulations provide ‘default’ methods and factors for valuing superannuation interests. The default methods and factors are not appropriate for all superannuation interests. Regulation 38 of the FLS Regulations provides that the Attorney-General may approve, in writing, alternative valuation methods. The *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003* (the Approval) has been made for this purpose. It contains methods and factors for determining the value of superannuation interests in more than 30 superannuation schemes. The Approval is a legislative instrument and has been registered on the Federal Register of Legislation. The method and factors approved for NSW SANCS Scheme interests are set out in Part 9 of Schedule 2 of the Approval.

For interests which the Attorney-General has approved alternative valuation methods, the Attorney-General also has the power to make a determination under subregulation 64(7) of the FLS Regulations setting out the information that a superannuation trustee is required, or not required, to provide about the superannuation interest. This is to ensure that applicants seeking information about superannuation interests, which are to be valued using alternative methods, receive appropriate, scheme-specific information to support the valuation of the interests.

Subregulation 64(7) authorises the Attorney-General to make a determination relating to the defined benefit component of an interest for which he has approved an alternative valuation method. Information to be provided in respect of an accumulation interest is set out in regulation 63 of the FLS Regulations.

This instrument amends the *Family Law (Superannuation) (Provision of Information — NSW State Authorities Non-contributory Superannuation Scheme) Determination 2010* to take account of the AEC account required by the SANCS Amendment Act. It ensures that the trustee is required to provide appropriate, scheme-specific information to support the valuation of superannuation interests under the NSW SANCS Scheme.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation on this instrument occurred between the Commonwealth Attorney-General's Department, the New South Wales Treasury and the Australian Government Actuary.

Regulatory Impact Statement

The Office of Best Practice Regulation was consulted about the Determination and advised that a Regulatory Impact Statement is not required as the amendments are minor and machinery in nature.

Commencement

The instrument commences on the day after registration on the Federal Register of Legislation.

The instrument is a legislative amendment for the purposes of the *Legislation Act 2003*.

Details of the instrument are as follows:

Section 1 – Name

Section 1 provides that the title of the instrument is the *Family Law (Superannuation) (Provision of Information – NSW State Authorities Non-contributory Superannuation Scheme) Amendment Determination 2019*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under subregulation 64(7) of the FLS Regulations.

Section 4 – Schedules

Section 4 is a technical provision which provides that the *Family Law (Superannuation) (Provision of Information – NSW State Authorities Non-contributory Superannuation Scheme) Determination 2010* is to be amended as set out in each applicable item.

Schedule 1—Amendments

Item 1 — Subsection 3(1)

Item 1 inserts the definition of basic benefit so that, for the purposes of this instrument, *basic benefit* has the same meaning as defined in subsection 3(1) of the *State Authorities Non-contributory Superannuation Act 1987* (NSW).

Item 2 — Subsection 3(1)

Item 2 repeals the definition of Commonwealth co-contribution account. This definition is no longer required as item 5 removes the only reference to 'Commonwealth co-contribution account' in the determination.

Item 2 also repeals the definition of STC. STC is the SAS Trustee Corporation continued under the *Superannuation Administration Act 1996* (NSW). This definition is no longer required as item 5 removes the only reference to 'STC' in the determination.

Item 3 — Section 5 (table item 1, column headed “Superannuation interest”)

Item 3 inserts ‘The basic benefit component of an’ at the beginning of table item 1 to clarify that only the ‘basic benefit’ component of the superannuation interest is affected by the determination. This confines the operation of the determination to the defined benefit component of the interest in accordance with subsection 64(7) of the FLS Regulations. Information in respect of the new accumulation interest may be required to be provided under regulation 63 of the FLS Regulations.

Item 4 — Section 5 (table item 1, column headed “Information that must be provided”, subparagraph (e)(iv))

Item 4 is a grammatical change to remove a semicolon and add a full stop, which was necessary due to the repeal of paragraphs (f) and (g) in item 5 below.

Item 5 — Section 5 (table item 1, column headed “Information that must be provided”, paragraphs (f) and (g))

Item 5 repeals paragraphs (f) and (g) from table item 1, the column headed ‘Information that must be provided’. This provision sets out the information that the trustee of the SANCS Scheme must provide about the basic benefit component of a superannuation interest.

Item 5 supports the amendments made in item 3, confining the operation of the determination to the defined benefit component of the interest in accordance with subsection 64(7) of the FLS Regulations. Information in respect of the new accumulation interest may be required to be provided under regulation 63 of the FLS Regulations.

Item 6 — At the end of section 5 (after the table)

Item 6 adds a note to the end of section 5, following the table, noting that for item 1 of the table, information in respect of other components of the interest may be required to be provided under regulation 63 of the FLS Regulations.

The determination is concerned with information relating to the ‘basic benefit’ component of the superannuation interest. This amendment draws attention to the fact that information in respect of the accumulation component of the superannuation interest may be required under regulation 63 of the FLS Regulations.