

**FAMILY LAW LEGISLATION AMENDMENT (SUPERANNUATION VALUATION
AND INFORMATION) INSTRUMENT 2022**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

Part VIII B of the *Family Law Act 1975* (Family Law Act) provides for the division of superannuation interests between married and de facto parties in family law proceedings. Following a relationship breakdown, the family law courts may split superannuation interests between parties where it is just and equitable to do so. The Family Law (Superannuation) Regulations 2001 (the FLS Regulations) have been prescribed to give effect to the distribution of superannuation interests under Part VIII B of the Family Law Act.

The purpose of the Family Law Legislation Amendment (Superannuation Valuation and Information) Instrument 2022 (the Amendment Instrument) is to update two legislative instruments made under the FLS Regulations, following a merger on 29 April 2022 between Statewide Superannuation Pty Ltd (Statewide) and Host-Plus Pty Ltd (Host-Plus), by way of a successor fund transfer. The amendments relate to interests held in the South Australian Local Government Superannuation scheme (the Scheme).

Prior to 29 April 2022, the Scheme was administered by Statewide as the trustee of the Statewide Superannuation Trust (Statewide Fund). Following the merger on 29 April 2022, Host-Plus as the trustee of the Hostplus Superannuation Fund (Host-Plus Fund), will replace Statewide and the Statewide Fund in name and assume responsibility for the Scheme.

To facilitate superannuation splitting, the FLS Regulations provide ‘default’ methods and factors for valuing superannuation interests. However, the default methods and factors are not appropriate for valuing all types of superannuation interests. Some schemes offer ‘non-standard’ superannuation products, whose peculiarities mean that the default methods and factors would not result in an accurate valuation of the interest.

As an alternative to the default methods and factors, trustees of superannuation schemes may seek the Attorney-General’s approval of scheme-specific valuation methods and factors. Regulations 38 and 43A of the FLS Regulations provide that the Attorney-General may approve, in writing, scheme specific methods and factors for the valuation of superannuation interests for family law purposes. Scheme specific methods and factors have been approved by the Attorney-General for over 30 superannuation schemes. These are contained in the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 (the Approval Instrument). Scheme specific methods and factors

have been approved by the Attorney-General for the valuation of superannuation interests held in the Scheme. These methods and factors are contained in Part 2 of Schedule 6 of Volume 6 of the Approval Instrument.

Where scheme specific methods or factors have been approved under FLS Regulations 38 and 43A in respect of particular superannuation interests, FLS Regulations 63(6A) and (6B), and 64(7), (7A), (7AA), and (7B) authorise the Attorney General to make determinations setting out the information that should be provided by a trustee in response to a request for information under section 90XZB of the Family Law Act. The Scheme is covered by a scheme specific information determination, the Family Law (Superannuation) (Provision of Information – SA Local Government Superannuation Scheme) Determination 2003 (the Information Determination Instrument).

The Amendment Instrument will:

- update definitions and terminology in the Approval Instrument to reflect changes to the Scheme arising due to the merger; and
- update definitions and terminology in the Information Determination Instrument to reflect changes to the Scheme arising due to the merger, and update two references to the FLS Regulations, including the power under which the Information Determination is made, following amendments to the FLS Regulations.

INCORPORATION BY REFERENCE

The Amendment Instrument incorporates by reference the trust deed of the Scheme, defined as the declaration of trust dated 8 February 1988, made by Host-Plus Pty Ltd, as amended and in force on 29 April 2022. The trust deed is available at: <https://hostplus.com.au/>.

CONSULTATION

The Attorney-General's Department consulted with the Australian Government Actuary and Host-Plus on the development of the amendments in relation to the merger. The purpose of the consultation was to ensure the accuracy of the proposed amendments, given their technical nature. The feedback was supportive of the amendments, and no concerns were raised.

The Office of Best Practice Regulation was consulted about this instrument and has advised that a Regulatory Impact Statement is not required (OBPR22-01856).

The Amendment Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Amendment Instrument are set out in **Attachment A**.

Details of the Family Law Legislation Amendment (Superannuation Valuation and Information) Instrument 2022

Section 1 – Name

Section 1 provides that the name of the Amendment Instrument is the *Family Law Legislation Amendment (Superannuation Valuation and Information) Instrument 2022*.

Section 2 - Commencement

Section 2 provides that the whole of the Amendment Instrument commences on 29 April 2022.

Section 3 - Authority

Section 3 provides that the Amendment Instrument is made under paragraph 38(1)(c) and subregulation 64(7AA) of the Family Law (Superannuation) Regulations 2001.

Section 4 – Schedules

Section 4 is a technical provision which provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003

Item 1: Subclause 1(1) of Part 2 of Schedule 6 (definition of *Rules*)

Item 1 omits the reference to ‘Division 9’ in the definition of *Rules* and substitutes it with ‘Division 4’. This amendment reflects the location of the Rules in the new trust deed of the Scheme, and ensures that the definition in Part 2 of Schedule 6 remains accurate following the merger.

Item 2: Subclause 1(1) of Part 2 of Schedule 6 (definition of *trust deed*)

Item 2 repeals the definition of *trust deed* for the purposes of Part 2 of Schedule 6 and substitutes it with ‘trust deed means the declaration of trust dated 8 February 1988, made by Host-Plus Pty Ltd, as amended and in force on 29 April 2022’. This amendment reflects the new trust deed of the Scheme and ensures that the definition in Part 2 of Schedule 6 remains accurate following the merger.

Item 3: Subclause 1(2) of Part 2 of Schedule 6

Item 3 omits ‘Member’s Credit’ from subclause 1(2) of Part 2 of Schedule 6. This amendment reflects that Member’s Credit is no longer a defined term in the Rules of the trust deed.

Item 4: Clause 2 of Part 2 of Schedule 6 (table item 1, column headed “Method or factor”, definition of *AB*)

Item 4 omits the reference to ‘Member’s Credit’ in clause 2 and substitutes it with ‘member’s accumulation benefit’. This amendment reflects that Member’s Credit is no longer a defined term in the Rules of the trust deed. ‘Member’s accumulation benefit’ should be interpreted according to its plain language meaning.

Family Law (Superannuation) (Provision of Information – SA Local Government Superannuation Scheme) Determination 2003

Item 5: After section 2

Item 5 inserts section 2A, which provides that the Information Determination Instrument is made under subregulation 64(7AA) of the FLS Regulations. This amendment updates the relevant authority in the FLS Regulations under which the Information Determination Instrument is made. The *Family Law (Superannuation) Amendment (2022 Measures No. 1) Regulations 2022* inserted subregulation 64(7AA) into the FLS Regulations to clarify the authority of the Attorney-General to make information determinations for hybrid superannuation funds. A hybrid superannuation fund is a fund with both accumulation and defined benefit components. The Scheme is a hybrid fund.

Item 6: Section 3 (definition of *Member’s Credit*)

Item 6 repeals the definition of *Member’s Credit* for the purposes of the Information Determination Instrument. This amendment reflects that Member’s Credit is no longer a defined term in the Rules of the trust deed.

Item 7: Section 3 (definition of *Rules*)

Item 7 omits the reference to ‘Division 9’ in the definition of *Rules* and substitutes it with ‘Division 4’. This amendment reflects the location of the Rules in the new trust deed of the Scheme, and ensures that the definition in the Information Determination Instrument remains accurate following the merger.

Item 8: Section 3 (definition of *trust deed*)

Item 8 repeals the definition of *trust deed* for the purposes of the Information Determination Instrument and substitutes it with ‘trust deed means the declaration of trust dated 8 February 1988, made by Host-Plus Pty Ltd, as amended and in force on 29 April 2022’. This amendment reflects the new trust deed of the Scheme, and ensures that the definition in the Information Determination Instrument remains accurate following the merger.

Item 9: Section 5

Item 9 omits the reference to ‘paragraph 64(7)(b)’ in section 5 and substitutes it with ‘paragraph 64(7AA)(c)’. This amendment updates the reference to the relevant subregulation in the FLS Regulations. The *Family Law (Superannuation) Amendment (2022 Measures No. 1) Regulations 2022* inserted subregulation 64(7AA) into the FLS Regulations to clarify the authority of the Attorney-General to make information determinations for hybrid superannuation funds. A hybrid superannuation fund is a fund with both accumulation and defined benefit components. The Scheme is a hybrid superannuation fund.

Item 10: Paragraph 5(a)

Item 10 omits the reference to ‘Member’s Credit’ in paragraph 5(a) and substitutes it with ‘member’s accumulation benefit’. This amendment reflects that Member’s Credit is no longer a defined term in the Rules of the trust deed. ‘Member’s accumulation benefit’ should be interpreted according to its plain language meaning.