

**FAMILY LAW (SUPERANNUATION) AMENDMENT (TECHNICAL
AMENDMENTS) REGULATIONS 2025**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Under subsection 125(1) of the *Family Law Act 1975*

PURPOSE AND OPERATION OF THE INSTRUMENT

The Family Law (Superannuation) Amendment (Technical Amendments) Regulations 2025 (the Amendment Regulations) amend two subclauses in Schedule 3 to the Family Law (Superannuation) Regulations 2025 to rectify two errors.

The *Family Law Act 1975* (the Act) provides the legislative framework relating to divorce, parenting arrangements for children, and the division of property following relationship breakdown. Subsection 125(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Family Law (Superannuation) Regulations 2001 (the Principal Regulations) support the distribution of superannuation interests under Parts VIIIB and VIIC of the Act, following relationship breakdown.

The Family Law (Superannuation) Regulations 2025 (the 2025 Regulations) were made by the Governor-General in Council on 20 February 2025 and will commence on 1 April 2025, when they will replace the Principal Regulations. The Amendment Regulations amend the 2025 Regulations. The amendments in the Amendment Regulations are technical in nature and are intended to rectify two drafting errors identified after the 2025 Regulations were made.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

CONSULTATION

The Attorney-General's Department consulted the Australian Government Actuary (AGA) to rectify the errors to ensure the formulae give effect to earlier advice from the AGA, and produce accurate and reasonable valuations of superannuation interests.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

This Disallowable Legislative Instrument is compatible with human rights and does not raise any human rights issues. A Statement of Compatibility with Human Rights is set out in **Attachment A**.

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

Statement of Compatibility with Human Rights

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

Family Law (Superannuation) Amendment (Technical Amendments) Regulations 2025

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 Regulations

The Family Law (Superannuation) Amendment (Technical Amendments) Regulations 2025 (the Amendment Regulations) amend two subclauses in Schedule 3 to the Family Law (Superannuation) Regulations 2025 (the 2025 Regulations) to rectify two errors.

These amendments ensure the two corrected formulae produce accurate and reasonable valuations of a superannuation interests for the purposes of the *Family Law Act 1975*.

The 2025 Regulations are due to commence on 1 April 2025. The Amendment Regulations will commence immediately following the commencement of the 2025 Regulations or the start of the day after the instrument is registered, whichever is the later day.

Human rights implications

The amendments in the instrument are technical in nature and do not engage any of the applicable rights or freedoms.

Conclusion

The instrument is compatible with human rights because it does not raise any human rights issues.

Details of the proposed Family Law (Superannuation) Amendment (Technical Amendments) Regulations 2025

Section 1 – Name

This section provides that the title of this instrument is the Family Law (Superannuation) Amendment (Technical Amendments) Regulations 2025 (the Amendment Regulations).

Section 2 – Commencement

This section provides for the Amendment Regulations to commence on the later of immediately after the commencement of the Family Law (Superannuation) Regulations 2025 (2025 Regulations), and the start of the day after the instrument is registered.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Family Law Act 1975* (the Act).

Section 4 – Schedules

This section 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) Regulations 2025

Item [1] - Subclause 35(2) of Schedule 3 (formula)

This item repeals and substitutes the method at subclause 35(2) of Schedule 3 to the 2025 Regulations, with the effect that the method calculates a value based on the assumption that a member will choose to take 25% of their interest as a lump sum and 75% of their interest as a pension. This method applies for calculating the gross value of a superannuation interest:

- that is held as a result of employment in which the member spouse is still engaged
- where the benefit in respect of the interest is payable as a lump sum, a pension, or a combination of a lump sum and a pension, and
- where there is no provision in the eligible superannuation plan in which the interest is held restricting the proportion of the interest that may be taken as a lump sum or as a pension.

Item [2] – Subclause 45(2) of Schedule 3 (formula)

This item repeals and substitutes the method at subclause 45(2) of Schedule 3 to the 2025 Regulations, with the effect that the method calculates a value based on the assumption that a member will choose to take 25% of their interest as a lump sum and 75% of their interest as a pension. This method applies for calculating the gross value of a superannuation interest:

- that is held as a result of employment in which the member spouse is no longer engaged

- where the member may choose for benefits in respect of the interest to be payable as a lump sum, a pension, or a combination of a lump sum and a pension, and
- where there is no provision in the eligible superannuation plan in which the interest is held restricting the proportion of the interest that may be taken as a lump sum or as a pension.