

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Superannuation Act 1976

Orders under subsection 146MH(1)

Superannuation (Family Law – Superannuation Act 1976) Amendment Orders 2007 (No.1)

The *Superannuation Act 1976* (the Act) makes provision for and in relation to the Commonwealth Superannuation Scheme (CSS) for Australian Government employees and for certain other persons.

Part IXB of the Act makes specific provision for the splitting of a superannuation interest when the trustee of the CSS, the Australian Reward Investment Alliance (ARIA), receives a splitting agreement or splitting order in relation to that interest as a result of actions taken under the *Family Law Act 1975* (the Family Law Act). Part IXB allows for a separate interest to be created in the CSS for the former spouse of a CSS member who has been allocated a part of the member's interest in the CSS under such a splitting agreement or splitting order.

Subsection 146MH (1) of the Act provides that the Minister may make Orders prescribing matters required or permitted to be prescribed by Part IXB. The **Superannuation (Family Law – Superannuation Act 1976) Orders 2004** (the Principal Orders) prescribe the matters required or permitted by Part IXB of the Act to be prescribed.

Section 146MA of the Act defines a number of terms used in Part IXB, including the term **scheme value**. The definition of **scheme value** refers to the amount determined under the Orders made under subsection 146MH (1) of the Act. The Principal Orders provide methods and/or factors that are to be used to calculate the relevant amounts in relation to this definition.

The purpose of the **Superannuation (Family Law – Superannuation Act 1976) Amendment Orders 2007 (No. 1)** (the Amending Orders) is to amend the Principal Orders so that the calculations that are used in determining certain amounts under the Principal Orders take account of any early release amounts that have been paid to the member on severe financial hardship and/or compassionate grounds.

The details of the Amending Orders are explained in the **Attachment**.

Section 167AB of the Act provides that the Minister may not make Orders under the Act without the agreement of ARIA except in certain limited circumstances. ARIA has consented to the Amending Orders.

The Australian Government Actuary and the Attorney-General's Department were consulted in relation to the Amending Orders.

The Amending Orders are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. Although section 44 of the LIA exempts superannuation instruments from disallowance, the Amending Orders are subject to possible disallowance in accordance with section 146MH of the 1976 Act.

The Amending Orders commence on 1 January 2008.

***SUPERANNUATION (FAMILY LAW – SUPERANNUATION ACT 1976) AMENDMENT
ORDERS 2007 (No.1)***

Section 1 – Name of Orders

This section provides that the name of the instrument is the *Superannuation (Family Law – Superannuation Act 1976) Amendment Orders 2007 (No.1)* (the Amending Orders).

Section 2 – Commencement

This section provides that the Amending Orders commence on 1 January 2008.

Section 3 – Amendment of the *Superannuation (Family Law – Superannuation Act 1976) Orders 2004*

This section provides that Schedule 1 of the Orders amends the *Superannuation (Family Law – Superannuation Act 1976) Orders 2004*.

Schedule 1

Item 1 amends subsection 1.03(1) of the Principal Orders inserting a definition of ***early release deduction amount*** after the definition of CSS. The early release deduction amount comprises funded amounts that have been released, plus interest on those amounts. Funded amounts include basic contributions, supplementary contributions and employer-productivity contributions.

Items 2 to 6 amend sections 2.01, 2.02, 2.03, 3.01 and 4.01 of the Principal Orders to provide that the amounts determined under those sections are reduced by any early release deduction amount.

These sections determine the amount of the various components of a CSS member's benefit at the time of a marriage breakdown in order to facilitate the splitting of those components between the member and the member's former spouse. The amendments to these sections ensure that the early release deduction amount is taken into account when determining the amount of each component.

Items 7 to 22 amend Part 1 of Schedule 1 to the Principal Orders, which sets out the methods to be used for determining "scheme value" in relation to a CSS member. The amendments insert a definition of ***early release deduction amount*** where appropriate and ensure that the early release deduction amount is taken into account when determining scheme value.