

EXPLANATORY STATEMENT

Issued by authority of the Minister for Finance and Deregulation

Judges and Governors-General Legislation Amendment (Family Law) Act 2012

Judges' Pensions (Item 48) Order 2013

The *Judges' Pensions Act 1968* (Judges' Act) provides retirement benefits to Federal Judges, and death benefits in respect of their eligible spouses and children.

Schedule 1 of the *Judges and Governors-General Legislation Amendment (Family Law) Act 2012* (Amendment Act) makes amendments to the Judges' Act to implement new superannuation splitting arrangements for Federal Judges. Part 2 of Schedule 1 contains transitional arrangements to cover existing splitting agreements and orders in respect of interests under the Judges' Act.

The amendments will allow the superannuation benefits of a judge to be split with a former spouse in the event of a marital or relationship breakdown, at a time a superannuation splitting agreement or order is made. A former spouse will be able to receive his or her share of the benefit at this time, rather than payment of the benefit being linked to the retirement of the judge and being ceased upon their death. These arrangements will give certainty to both parties in property settlement negotiations and will provide each party with their own separate benefit at the time of the split.

The transitional arrangements contained in Part 2 of Schedule 1 of the Amendment Act create a separate benefit for relevant former spouses from the commencement time.

Item 48 of the Amendment Act provides that the Minister may make orders providing for matters required or permitted by the Act to be provided, or matters necessary or convenient to be provided, in order to carry out or give effect to the Act.

The purpose of the *Judges' Pensions (Item 48) Order 2013* (Item 48 Order) is to set out the detailed methodology and factors for valuing interests covered by Part 2, Schedule 1 of the Amendment Act and the steps for calculating benefits that are subject to a splitting agreement or order at the commencement time. Further detailed information on the Item 48 Order is set out in the [Attachment](#).

The Item 48 Order is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). Although section 44 of the LIA exempts superannuation instruments from disallowance, the Item 48 Order is subject to possible disallowance under Item 48 of the Amendment Act.

Consistent with the Statement of Compatibility with Human Rights prepared for the Amendment Act, the GG Order 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*.

The Department of Finance and Deregulation consulted with the Attorney-General's Department on the development of the Amendment Act and the Item 48 Order.

ATTACHMENT

DETAILS OF THE ITEM 48 ORDERSection 1 – Name of Order

This section provides that the name of the order is the *Judges' Pensions (Item 48) Order 2013*.

Section 2 – Commencement

The section provides for the order to commence on 15 March 2013.

Section 3 – Authority

This section provides that the authority for the order is the *Judges and Governors-General Legislation Amendment (Family Law) Act 2012* (Amendment Act).

Section 4 – Definitions

This section includes definitions specific to the order. A range of other terms included in the order are defined in the Amendment Act.

Section 5 – Scheme value

Under the Amendment Act, it is necessary to calculate the scheme value, in order to determine the transfer amount. The transfer amount is the amount being transferred to the former spouse to create his or her benefit.

Calculation of the scheme value is undertaken using the method set out in Schedule 1 of the order.

Section 6 – Immediate transitional pension for non-member spouse

This section sets out the steps for calculating the pension for the non-member (that is, the former) spouse, called an 'immediate transitional pension'.

The first step is to identify the transfer amount, upon which the pension will be based. The transfer amount is calculated in accordance with the Amendment Act by reference to the splitting percentage. The splitting percentage is the same percentage that was used to calculate the split of the last splittable payment before the commencement time. That is, the percentage by which the benefit is split does not change under these new arrangements.

The steps calculate the annual rate of the non-member spouse's pension by dividing the transfer amount by a factor that represents the non-member spouse's age and gender in years and months (and thus reflects his or her life expectancy) at the commencement time.

The annual amount is turned into a percentage of the Federal Court Judge's salary at the commencement time. The pension is indexed by applying the percentage to the Federal Court Judge's salary. Step 5 provides for this calculation at all times after the commencement time.

Section 7 – Reduction of retirement pension

This section sets out the steps for calculating the reduced judicial retirement pension. The reduction to the retirement pension is directly related to the transfer amount and to the splitting percentage in place before the commencement time.

Accordingly, the outcome is that the same percentage reduction to the pension will apply under this calculation as was applied under the splittable payments before the commencement time. That is, the percentage reduction to the judicial retirement pension will not change under these new arrangements.

The first steps calculate a lump sum value of the pension by multiplying the annual pension amount at the commencement time, by a factor that represents the judge's age and gender in years and months (and thus his or her life expectancy) at the commencement time.

The transfer amount is subtracted from this amount before it is converted back to an annual pension amount by the same age and gender factor relevant to the judge.

Similar the immediate transitional pension, the annual retirement pension amount is turned into a percentage of the applicable judicial salary (that is, the salary applicable to the judge) at the commencement time. The pension is indexed by applying the percentage to the applicable judicial salary. Step 7 provides for this calculation at all times after the commencement time.

Schedule 1 – Methods and factors

Schedule 1 sets out the method for calculating the scheme value of the judge's pension interest as a lump sum amount.

As the pension is in payment at the commencement time, the scheme value is calculated by multiplying the annual rate of the pension payable to the member spouse (that is, the retired judge) at the commencement time by a factor that represents the judge's age and gender (and thus reflects his or her life expectancy) at the commencement time.