# EXPLANATORY STATEMENT

*Taxation Administration Act 1953*

*Taxation Administration Act 1953 (Meaning of End Benefit) Instrument 2013*

Subsection 133-130(2) in Schedule 1 to the *Taxation Administration Act 1953* (the Act) provides that the Minister may, by legislative instrument, specify a superannuation benefit that is not an end benefit.

The purpose of this instrument is to ensure that family law superannuation payments are not end benefits under section 133-130 in Schedule 1 to the Act and therefore do not trigger an individual’s liability to pay Division 293 tax that has been deferred to a debt account.

The *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013* (the Amending Act) amended the *Income Tax Assessment Act 1997* (ITAA 1997) and the Act to give effect to the Division 293 measure.

It did this by imposing tax at 15 per cent on certain superannuation contributions for individuals whose income broadly exceeds $300,000 to ensure that the tax concession received by such individuals is more closely aligned with the concession received by average income earners.

Special arrangements apply to contributions in respect of a defined benefit interest. The tax on these contributions is deferred to a debt account and the due date for payment deferred until the payment of the first superannuation benefit (the **end benefit**) from the relevant interest.

Certain benefits are excluded from being end benefits, including benefits specified by legislative instrument.

This instrument specifies that a family law superannuation payment is not an end benefit.

Family law superannuation payments are defined in subsection 307-5(7) of the ITAA 1997 as payments in accordance with Part VIIIB of the *Family Law Act 1975*, the *Family Law (Superannuation) Regulations 2001*, Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*, Part 4A of the *Retirement Savings Accounts Regulations 1997* or as specified in the regulations.

Broadly, family law superannuation payments arise in the context of property settlements following the end of relationships. In this situation, individuals have not in substance received a benefit from their superannuation fund, and as such it would not be appropriate to treat these payments as an end benefit.

The instrument applies from 1 July 2012. Subsection 133-130(3) of the Act expressly permits the application date despite subsection 12(2) of the *Legislative Instruments Act 2003*.

The retrospective operation of the instrument benefits affected individuals as it ensures they are not liable to pay their debt account for deferred tax as a consequence of an event that would otherwise constitute receiving an end benefit in relation to a defined benefit interest.

The Act does not specify any conditions that must be satisfied before this instrument is made.

Public consultation on an exposure draft, which excluded family law payments and payments for permanent incapacity, was undertaken between 7 June 2013 and 14 June 2013. Three submissions were received. These submissions suggested that payments for permanent incapacity and payments for terminal illness should be treated consistently, although no clear preference was expressed as to whether they should be included or excluded from the definition of ‘end benefit’. No other significant issues were raised.

The public consultation on the instrument followed both public and targeted consultation on an exposure draft of the legislation for the Sustaining the Superannuation Contribution Concession measure, which was held over a short period at the beginning of May 2013.

The legislative instrument commenced on 1 July 2012.

### Statement of Compatibility with Human Rights

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

***Tax Administration Act 1953* (Meaning of End Benefit) Instrument 2013**

This 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 Legislative Instrument

The purpose of this instrument is to specify that superannuation benefits that are family law superannuation payments do not trigger an individual’s liability to pay deferred tax under section 133-130 in Schedule 1 to the Act.

#### Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.