

## **EXPLANATORY STATEMENT**

**Issued by the Authority of the Attorney-General**

*Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2019*

### **Introduction**

This instrument is made under regulation 38 of the *Family Law (Superannuation) Regulations 2001* (FLS Regulations) and is a legislative instrument under section 8 of the *Legislation Act 2003*.

### **Outline**

The *State Authorities Non-contributory Superannuation Act 1987* (NSW) (SANCS Act) was amended by the *State Authorities Non-contributory Superannuation Amendment Act 2013* (NSW) (SANCS Amendment Act) to require NSW Public Sector Employers to pay an additional monthly superannuation contribution to employees in certain NSW public sector superannuation schemes.

The SANCS Amendment Act requires that an additional employer contributions account (AEC account) be established for each eligible member for the purposes of holding the new contribution.

Part VIIIB of the *Family Law Act 1975* (Family Law Act) provides for the division of superannuation between married and de facto couples in the event of a relationship breakdown. SANCS Scheme interests are superannuation interests as defined by section 90MD of the Family Law Act, and are subject to the superannuation splitting regime under the Family Law Act.

To facilitate superannuation splitting, the FLS Regulations provide ‘default’ methods and factors for valuing superannuation interests. The default methods and factors are not appropriate for all superannuation interests. Regulation 38 of the FLS Regulations provides that the Attorney-General may approve, in writing, alternative valuation methods. The *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003* (the Approval) has been made for this purpose. It contains methods and factors for determining the value of superannuation interests in more than 30 superannuation schemes. The Approval is a legislative instrument and has been registered on the Federal Register of Legislation. The method and factors approved for SANCS Scheme interests are set out in Part 9 of Schedule 2 of the Approval.

This instrument amends the Approval to ensure that the valuation method for SANCS Scheme interests takes into account the additional employer contributions provided for in the SANCS Amendment Act.

### **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, consultation on this instrument occurred between the Commonwealth Attorney-General’s Department, the New South Wales Treasury and the Australian Government Actuary.

### **Regulatory Impact Statement**

The Office of Best Practice Regulation was consulted about the Determination and advised that a Regulatory Impact Statement is not required as the amendments are minor and machinery in nature.

### **Commencement**

The instrument commences on the day after registration on the Federal Register of Legislation.

The instrument is a legislative amendment for the purposes of the *Legislation Act 2003*.

Details of the instrument are as follows:

### ***Section 1 – Name***

Section 1 provides that the title of the instrument is the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2019*.

### ***Section 2 – Commencement***

Section 2 provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

### ***Section 3 – Authority***

Section 3 provides that the instrument is made under regulation 38 of the FLS Regulations.

### ***Section 4 – Schedules***

Section 4 is a technical provision which provides that the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2003* is to be amended as set out in each applicable item.

### ***Schedule 1—Amendments***

#### **Item 1 — Subclause 1(3) of Part 9 of Schedule 2 (Note 1, before “Commonwealth co-contribution account”)**

Item 1 provides that, for the purposes of Part 9 of the Approval, *additional employer contributions account* has the same meaning as defined in section 3 of the *State Authorities Non-contributory Superannuation Act 1987* (NSW).

#### **Item 2 — Clause 2 of Part 9 of Schedule 2 (table item 1, column headed “Method”)**

Item 2 amends the method to be used to determine the interest for a contributing member in the SANCS Scheme by including a reference to the additional employer contributions (AEC).

Together with item 3, below, this will ensure that the balance of any AEC account will be taken into account when valuing the superannuation interest of a SANCS Scheme member.

#### **Item 3 — Clause 2 of Part 9 of Schedule 2 (table item 1, column headed “Method”, at the end of the column)**

Item 3 inserts an explanation of how to calculate AEC when using the new method to value the interest for a contributing member in the SANCS Scheme.

Together with item 2, above, this will ensure that the balance of any AEC account will be taken into account when valuing the superannuation interest of a SANCS Scheme member.