

**FAMILY LAW (SUPERANNUATION) (METHODS AND FACTORS FOR VALUING  
PARTICULAR SUPERANNUATION INTERESTS) AMENDMENT APPROVAL  
2023**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The purpose of the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2023 (the Amendment Approval) is to reflect the transfer of the Energy Industries Superannuation Scheme Pty Ltd ('EISS') into the Construction and Building Industries Superannuation Fund ('Cbus') ('the Scheme').

Part VIIIB and Part VIIC of the *Family Law Act 1975* (the Family Law Act) provide for the division of superannuation interests between married and de facto parties in family law proceedings. Following a relationship breakdown, the family law courts may split superannuation interests between parties where it is just and equitable to do so. The Family Law (Superannuation) Regulations 2001 (the FLS Regulations) have been prescribed to give effect to the distribution of superannuation interests under Part VIIIB and Part VIIC of the Family Law Act.

The FLS Regulations provide 'default' methods and factors for valuing superannuation interests. However, the default methods and factors are not appropriate for valuing all types of superannuation interests. Some schemes offer 'non-standard' superannuation products, whose peculiarities mean that the default methods and factors would not result in an accurate valuation of the interest. As an alternative to the default methods and factors, trustees of superannuation schemes may seek the Attorney-General's approval of scheme-specific methods and factors.

FLS Regulations 38 and 43A authorise the Attorney-General to approve methods and factors to be used to determine the gross value of particular superannuation interests. The Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 (the Approval Instrument) currently sets out methods and factors for over thirty superannuation schemes. Scheme-specific methods and factors have been approved by the Attorney-General for the valuation of superannuation interests held in the Scheme. These methods and factors are contained in Part 22 of Schedule 10 of the Approval Instrument.

United Super Pty Ltd, as the trustee of Cbus, has entered an agreement with EISS to undertake a successor fund transfer, which is intended to take effect on 12 May 2023. On that date, EISS's interest will be transferred into Cbus and Cbus will replace EISS both in name and obligations applying under the Approval Instrument.

The Amendment Approval will update definitions and terminology in Part 22 of Schedule 10 of the Approval Instrument to reflect changes to the Scheme arising due to the transfer. Several minor amendments will update cross-references to the current EISS rules to instead refer to the equivalent rules in the Cbus Trust Deed.

The valuation of superannuation interests that Part 22 of Schedule 10 of the Approval Instrument deals with, and the treatment of those interests under family law, will not change as a result of these amendments.

## **INCORPORATION BY REFERENCE**

The Amendment Approval incorporates by reference the declaration of trust dated 29 May 1984, entered into by United Super Pty Ltd, as amended and as in force on 12 May 2023. The Trust Deed (containing the Cbus Rules) will be made available online at <https://www.cbussuper.com.au/>. If there is any administrative delay in publishing the Trust Deed on or from 12 May 2023, or if members and participating employers need assistance accessing it on the website, a request for a copy of the Trust Deed can be made directly to Cbus.

## **LEGISLATION ACT 2003**

The Amendment Approval is a legislative instrument for the purposes of the *Legislation Act 2003*. The Amendment Approval is not subject to disallowance or sunseting. Regulation 9, Item 3 of the *Legislation (Exemptions and Other Matters) Regulation 2015* provides that ‘An instrument (other than a regulation) relating to superannuation’ is a class of legislative instrument that is not subject to disallowance for the purpose of sections 42 and 44 of the *Legislation Act 2003*. Furthermore, Regulation 11, Item 6 prescribes that ‘An instrument (other than a regulation) relating to superannuation’ is a class of legislative instrument that is not subject to sunseting. The Amendment Approval relates directly to the framework for the valuation of superannuation for the purpose of superannuation splitting in family law property matters.

## **CONSULTATION**

The Attorney-General’s Department consulted with Cbus, and notified the Australian Government Actuary (AGA), in the preparation of the Amendment Approval. The purpose of the consultation was to ensure the accuracy of the proposed amendments, given their technical nature.

The Office of Impact Analysis was also consulted about this instrument and advised that an Impact Analysis is not required for these amendments (OIA23-04736).

Details of the Amendment Approval are set out in **Attachment A**.

## **Details of the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2023**

### Section 1 – Name

Section 1 provides that the name of the Amendment Approval is the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2023.

### Section 2 - Commencement

Section 2 provides that the whole of the Amendment Approval commences on 12 May 2023.

### Section 3 - Authority

Section 3 provides that the Amendment Approval is made under Regulations 38 and 43A of the Family Law (Superannuation) Regulations 2001.

### Section 4 – Schedules

Section 4 is a technical provision which 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) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003*

#### **Item 1: Part 22 of Schedule 10 (heading)**

Item 1 omits the reference to ‘Energy Industries Superannuation Scheme’ in the heading and substitutes it with ‘Construction and Building Unions Superannuation Fund’. This amendment reflects the change of the fund name and ensures that the relevant definitions and benefits remain easy to find and accurate following the transfer.

#### **Item 2: Clause 1 of Part 22 of Schedule 10**

Item 2 inserts a definition of *Cbus* to mean ‘the Construction and Building Unions Superannuation Fund established by the Trust Deed’. This amendment reflects the new trust deed of the Scheme and ensures that the definition in Part 22 of Schedule 10 remains accurate following the transfer.

### **Item 3: Clause 1 of Part 22 of Schedule 10 (definition of Early Retirement Age)**

Item 3 omits the reference to ‘rule 1.1’ in the definition of *Early Retirement Age* and substitutes it with ‘sub-clause 1.1’. This amendment updates a specific cross-reference to the existing EISS rules to instead refer to the equivalent rule in the Cbus Trust Deed.

### **Item 4: Clause 1 of Part 22 of Schedule 10 (definition of EISS)**

Item 4 repeals the definition of *EISS* as that term will no longer be referenced elsewhere in the Approval Instrument following the commencement of this Amendment Approval to reflect the change of the fund name to Cbus following the transfer.

### **Item 5: Clause 1 of Part 22 of Schedule 10 (definition of Rules)**

Item 5 repeals the existing definition of *Rules* and substitutes a new definition of *Rules* to mean ‘the rules set out in Annexure 1 of the Pool B Sub-Division Rules in the Defined Benefits Section of the Trust Deed’. This amendment reflects the new trust deed of the Scheme and ensures that the definition in Part 22 of Schedule 10 remains accurate following the transfer.

### **Item 6: Clause 1 of Part 22 of Schedule 10 (definition of Trust Deed)**

Item 6 repeals the existing definition of *Trust Deed* and substitutes a definition of *Trust Deed* to mean ‘the Trust Deed dated 29 May 1984, entered into by United Super Pty Ltd, as in force on 12 May 2023’. This amendment reflects the new trust deed of the Scheme, effective from 12 May 2023, and ensures that the definition in Part 22 of Schedule 10 remains accurate following the transfer.

### **Item 7: Clause 2 of Part 22 of Schedule 10 (heading)**

Item 7 omits the reference to ‘the EISS’ in the heading and substitutes it with ‘Cbus’. This amendment reflects the change of the fund name and ensures that the relevant definitions and benefits remain easy to find and accurate following the transfer.

### **Item 8: Paragraph 2(a) of Part 22 of Schedule 10**

Item 8 omits the reference to ‘the EISS’ in Paragraph 2(a) and substitutes it with ‘Cbus’. This amendment reflects the change of the fund name and ensures that the relevant definitions and benefits remain easy to find and accurate following the transfer.

### **Item 9: Clause 2 of Part 22 of Schedule 10 (table item 1, column headed “Interest in the growth phase”)**

Item 9 omits the reference to ‘the EISS if the person has elected to make provision for a benefit provided by rule 5.10’ in Paragraph 2(a) and substitutes it with ‘Cbus if the person has elected to make provision for a benefit provided by sub-clause 5.10’. This amendment reflects the change of the fund name and updates a specific cross-reference to the existing EISS rules to instead refer to the equivalent rule in the Cbus Trust Deed.

**Item 10: Clause 2 of Part 22 of Schedule 10 (table item 1, column headed “Method or factor”, definition of CFB)**

Item 10 omits the reference to ‘paragraph 5.10.8 (a)’ in table item 1 of the column headed “Method or factor”, definition of CFB, and substitutes it with ‘sub-clause 5.10(j)(i)’. This amendment updates a specific cross-reference to the existing EISS rules to instead refer to the equivalent rule in the Cbus Trust Deed.

**Item 11: Clause 2 of Part 22 of Schedule 10 (table item 1, column headed “Method or factor”, definition of EFB)**

Item 11 omits the reference to ‘paragraph 5.10.8 (b)’ in table item 1 of the column headed “Method or factor”, definition of EFB, and substitutes it with ‘sub-clause 5.10(j)(ii)’. This amendment updates a specific cross-reference to the existing EISS rules to instead refer to the equivalent rule in the Cbus Trust Deed.