

## EXPLANATORY STATEMENT

### Issued by authority of the Minister for Finance

*Parliamentary Contributory Superannuation Act 1948, Superannuation Act 1922 and Superannuation Act 1976*

*Superannuation Legislation Amendment (Family Law) Orders 2025*

The *Parliamentary Contributory Superannuation Act 1948* (1948 Act) makes provision for and in relation to the Parliamentary Contributory Superannuation Scheme (PCSS) which is established to provide superannuation benefits for parliamentarians who entered Federal Parliament prior to 9 October 2004 and certain other persons.

The *Superannuation Act 1922* (1922 Act) and the *Superannuation Act 1976* (1976 Act) make provision for and in relation to the 1922 Scheme and the Commonwealth Superannuation Scheme (CSS), respectively, which are established to provide superannuation benefits for persons employed by the Commonwealth and certain other persons.

#### PCSS

Part VAA of the 1948 Act makes specific provision for the splitting of a superannuation interest under the Act when the Secretary of the Department of Finance receives a superannuation splitting agreement or order as a result of actions taken under the *Family Law Act 1975* (Family Law Act). Part VAA allows for a separate interest to be created in the PCSS for the non-member (former) spouse of a PCSS member who has been allocated a part of the member spouse's interest in the PCSS under a superannuation splitting agreement or order and for the reduction to a scheme member's benefit.

Subsection 22CK(1) of the 1948 Act provides that the Minister may make Orders prescribing matters required or permitted to be prescribed by Part VAA of the 1948 Act. The *Superannuation (Family Law — Parliamentary Contributory Superannuation Act 1948) Orders 2004* prescribe the matters required or permitted by Part VAA.

#### 1922 Scheme

Part VA of the 1922 Act makes specific provision for the splitting of a superannuation interest under the Act when the trustee of the 1922 Scheme, that is the Commonwealth Superannuation Corporation (CSC), is served with an agreement or order in relation to that interest as a result of actions taken under Family Law Act. When a split occurs the former spouse of the member (described in Part VA as the non-member spouse) is allocated a separate interest in the scheme provided for by the Act and becomes entitled to an associate pension from the operative time of the agreement or order and the member's pension is reduced.

Subsection 93DE(1) of the 1922 Act provides that the Minister may make Orders prescribing matters required or permitted to be prescribed by Part VA of the Act. The *Superannuation (Family Law — Superannuation Act 1922) Orders 2004* prescribe the matters required or permitted by Part VA of the 1922 Act.

## CSS

Part IXB of the 1976 Act makes specific provision for the splitting of a superannuation interest under the Act when the trustee of the CSS, that is, CSC receives a splitting agreement or splitting order in relation to that interest as a result of actions taken under 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 and the reduction to the scheme member's benefit.

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

## **Amendment Instrument**

The *Superannuation Legislation Amendment (Family Law) Orders 2025* (Amending Orders) amend the *Superannuation (Family Law — Parliamentary Contributory Superannuation Act 1948) Orders 2004*, the *Superannuation (Family Law — Superannuation Act 1922) Orders 2004* and the *Superannuation (Family Law — Superannuation Act 1976) Orders 2004* (principal Orders).

The purpose of the Amending Orders is to amend the principal Orders because of the *Family Law (Superannuation) Regulations 2025*, repeal inoperative definitions and correct a typographical error, respectively.

Details of the Amending Orders are set out in Attachment A.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

## **Legislation Act 2003**

The Amending Orders are a legislative instrument for the purposes of the *Legislation Act 2003*. Subsection 22CK(2) of the 1948 Act, subsection 93DE(2) of the 1922 Act and subsection 146MH(2) of the 1976 Act provide that despite anything in regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to the orders made under subsection 22CK(1) of the 1948 Act, subsection 93DE(1) of the 1922 Act and subsection 146MH(1) of the 1976 Act respectively.

The Amending Orders and the principal Orders that it amends are not subject to sunset. Section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* specifies, via item 6 of the table in that section, 'an instrument (other than a regulation) relating to superannuation' to be a class of legislative instrument that is not subject to sunset under Part 4 of Chapter 3 of the *Legislation Act 2003*. Instruments pertaining to family law superannuation splitting in the PCSS, 1922 Scheme and the CSS are intended to have enduring operation and the existence of uncertainty in respect of an individual's scheme

entitlements would not be appropriate. Once the Amending Orders are made, they will be automatically repealed under section 48A of the *Legislation Act 2003*.

### **Consultation**

Section 17 of the *Legislation Act 2003* specifies that rule-makers should consult before making legislative instruments. CSC, the trustee of the 1922 Scheme and the CSS, was consulted on the amendments to the *Superannuation (Family Law — Superannuation Act 1922) Orders 2004* and the *Superannuation (Family Law — Superannuation Act 1976) Orders 2004* as set out in the Amending Orders and advised that it has no concerns with the amendments.

### **Approval by CSC**

Section 167AB of the 1976 Act provides that the Minister may not make Orders under section 146MH of the 1976 Act without the consent of CSC except in certain limited circumstances. CSC has consented to the amendment to the *Superannuation (Family Law — Superannuation Act 1976) Orders 2004* as set out in the Amending Orders.

### **Commencement**

The Amending Orders commence on the day after they are registered on the Federal Register of Legislation.

### **Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the *Superannuation Legislation Amendment (Family Law) Orders 2025***

**Section 1—Name**

**Section 1** provides that the name of the instrument is the *Superannuation Legislation Amendment (Family Law) Orders 2025* (the Amending Orders).

**Section 2—Commencement**

**Section 2** sets out the commencement provision for the Amending Orders. Item 1 in the table in subsection 2(1) provides that the whole of the Amending Orders commence on the day after they are registered on the Federal Register of Legislation. The note under the table informs the reader that the tables relates only to the provision of the instrument as originally made and will not be amended to deal with any later amendments of the instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Amending Orders.

**Section 3—Authority**

**Section 3** identifies the authority for the Amending Orders as:

- section 22CK of the *Parliamentary Contributory Superannuation Act 1948*;
- section 93DE of the *Superannuation Act 1922*; and
- section 146MH of the *Superannuation Act 1976*.

**Section 4—Schedules**

**Section 4** provides that each instrument specified in a Schedule to the Amending Orders is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amending Orders has effect according to its terms.

**Schedule 1—Amendments**

***Superannuation (Family Law — Parliamentary Contributory Superannuation Act 1948) Orders 2004 (PCSS Orders)***

**Item 1** repeals the definition of *FLS Regulations* in subsection 1.03(1) of the PCSS Orders. This is an inoperative definition as it is not referenced elsewhere in the PCSS Orders.

**Item 2** amends the definition of *Secretary* in subsection 1.03(1) of the PCSS Orders by omitting the reference to the ‘Department of Finance and Administration’ and substituting a reference to the ‘Finance Department’. This is consistent with the terminology in the *Parliamentary Contributory Superannuation Act 1948*.

**Item 3** amends the formula in table item 2 in clause 2 of Part 1 of Schedule 1 of the PCSS Orders to correct a typographical error by omitting ‘DPFy+m,s’ and substituting ‘DPFy+m’. Item 2 of the table in clause 2 of Part 1 of Schedule 1 sets out the method to be used to determine the scheme value at the operative time where the PCSS member has a deferred

pension in the PCSS. Since the November 2001 general election new Senators and Members who qualify for a pension on leaving Parliament before age 55 generally will have payment of that pension deferred until age 55.

***Superannuation (Family Law — Superannuation Act 1922) Orders 2004 (1922 Orders)***

**Item 4** amends the definition of *FLS Regulations* in subsection 3(1) of the 1922 Orders to omit the reference to the *Family Law (Superannuation) Regulations 2001* and substitute a reference to the *Family Law (Superannuation) Regulations 2025*.

**Item 5** omits the reference to subclause 2(2) of Schedule 4 of the *Family Law (Superannuation) Regulations 2001* in Step 2 of section 4 of the 1922 Orders and substitutes a reference to clause 3 of Schedule 5 of the *Family Law (Superannuation) Regulations 2025*.

Section 4 of the 1922 Orders provides for the calculation of the annual rate of associate pension payable to a former spouse where there has been a family law split of a 1922 Scheme member's pension. The process has three steps. Step 2 requires a factor to be identified for the former spouse that is equal to a value currently specified in subclause 2(2) of Schedule 4 of the *Family Law (Superannuation) Regulations 2001*. Under the *Family Law (Superannuation) Regulations 2025* the relevant factor is set out in clause 3 of Schedule 5 of the Regulations.

**Item 6** omits the reference to subclause 2(2) of Schedule 4 of the *Family Law (Superannuation) Regulations 2001* in steps 3A and 3B of section 6 of the 1922 Orders and substitutes a reference to clause 3 of Schedule 5 of the *Family Law (Superannuation) Regulations 2025*.

Section 6 of the 1922 Orders provides for the calculation to reduce a 1922 scheme member's pension where there has been a family law split of that pension. The process has seven possible steps. Steps 3A and 3B require a factor to be identified for the pensioner that is equal to a value currently specified in subclause 2(2) of Schedule 4 of the *Family Law (Superannuation) Regulations 2001*. Under the *Family Law (Superannuation) Regulations 2025* the relevant factor is set out in clause 3 of Schedule 5 of the Regulations.

***Superannuation (Family Law — Superannuation Act 1976) Orders 2004 (1976 Orders)***

**Item 7** repeals the definition of *FLS Regulations* in subsection 1.03(1) of the 1976 Orders. This is an inoperative definition as it is not referenced elsewhere in the 1976 Orders.

**Statement of Compatibility with Human Rights**

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

***Superannuation Legislation Amendment (Family Law) Orders 2025***

This disallowable 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 disallowable legislative instrument**

The *Superannuation Legislation Amendment (Family Law) Orders 2025* amend the *Superannuation (Family Law — Parliamentary Contributory Superannuation Act 1948) Orders 2004*, the *Superannuation (Family Law — Superannuation Act 1922) Orders 2004* and the *Superannuation (Family Law — Superannuation Act 1976) Orders 2004* as a result of the new *Family Law (Superannuation) Regulations 2025*, repeal inoperative definitions and correct a typographical error respectively.

**Human rights implications**

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

**Conclusion**

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

**Senator the Hon Katy Gallagher, Minister for Finance**