

# CHAPTER 1

## Introduction

1.1 On 15 March 2012, the Judges and Governors-General Legislation Amendment (Family Law) Bill 2012 (Bill) was introduced into the House of Representatives by the Hon. Gary Gray MP, Special Minister of State and Minister for the Public Service and Integrity (Minister).<sup>1</sup> On 22 March 2012, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 8 May 2012.<sup>2</sup>

### Purpose of the Bill

1.2 The *Family Law Act 1975* allows superannuation interests to be treated as property which can be split by married and de facto couples at the time of a family breakdown and property settlement. According to the Explanatory Memorandum (EM) to the Bill, superannuation splitting assists in providing separating couples with a 'clean break' from the relationship and also provides both parties with control over their respective individual interests.<sup>3</sup>

1.3 However:

[T]he current family law arrangements for judges and Governors-General are inconsistent with family law policy of a clean break. The arrangements are also out of step with the other Commonwealth defined benefit superannuation schemes, which have since 2004 provided separate interest benefits to former spouses of scheme members in a family law split.<sup>4</sup>

1.4 For judges, the current 'percentage-only' splitting arrangements provided for in the *Judges' Pensions Act 1968* (Judges' Act) mean that a judge's pension is split only when payments are made to a retired judge. A former spouse does not receive any payment until that time and the payments cease upon the judge's death.<sup>5</sup>

1.5 For Governors-General, the *Governor-General Act 1974* (Governor-General Act) does not provide for the splitting of a superannuation interest at the time of a family law property settlement.<sup>6</sup>

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1 *House of Representatives Hansard*, 15 March 2012, p. 1.

2 Journals of the Senate, No. 87-22 March 2012, p. 2351.

3 Explanatory Memorandum, p. 1.

4 The Hon. Gary Gray MP, Special Minister of State and Minister for the Public Service and Integrity, *House Hansard*, 15 March 2012, p. 1.

5 Explanatory Memorandum, p. 2. A further feature of the current arrangements is that there is no certainty as to the overall quantum of benefit that a former spouse is entitled to receive.

6 Explanatory Memorandum, p. 2.

1.6 The Bill addresses these issues, by amending the Judges' Act and the Governor-General Act to provide for an amount to be calculated and transferred to the former spouse of a judge or Governor-General as a separate superannuation benefit at the time of a family law split, based on the percentage split or specified amount in a splitting agreement or splitting order.<sup>7</sup>

1.7 The EM notes that the family law courts or the separating parties determine whether a judge's or Governor-General's superannuation benefit is to be split and, if so, the amount or the percentage of the split between the parties. The amendments proposed in the Bill do not mean that the Commonwealth will be determining family law property settlements: the Bill's provisions only come into effect when the Secretary of the Department of Finance and Deregulation (Department) receives a splitting order or splitting agreement in respect of a superannuation interest under the Judges' Act or Governor-General Act.<sup>8</sup>

### **Conduct of the inquiry**

1.8 Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to 19 organisations and individuals, inviting submissions by 13 April 2012.

1.9 The committee received one submission from the Department, which is available on the committee's website at [http://www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon). No public hearings were held for the inquiry.

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7 Explanatory Memorandum, pp 5 and 17; Department of Finance and Deregulation, *Submission 1*, p. 1.

8 Explanatory Memorandum, p. 3.