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No. 19 2002–03

Family Law Legislation Amendment
(Superannuation) (Consequential Provisions) Bill
2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Family Law Legislation Amendment (Superannuation)
(Consequential Provisions) Bill 2002

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20 August 2002

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Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2002

Date Introduced: 27 June 2002

House: House of Representatives

Portfolio: Attorney-General

Commencement: On Royal assent, however, Schedules 1, 2, 3, and 4 commence immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*, which is expected to commence in the second half of 2002 (and on 28 December 2002 if not proclaimed earlier).¹

Purpose

To ensure the appropriate treatment of Government income streams when a superannuation interest is split on marriage breakdown by amending the following Acts:

- *Family Law Act 1975*
- *Judges' Pensions Act 1968*
- *Social Security Act 1991*, and
- *Veterans' Entitlements Act 1986*.

Background

On 18 June 2001, Parliament passed the *Family Law Legislation Amendment (Superannuation) Act 2001*. When this Act commences operation (on 28 December 2002 if not proclaimed earlier) superannuation interests will be able to be divided on marriage breakdown either by agreement or court order. The amendments contained in the *Family Law Legislation Amendment (Superannuation) Act 2001* are discussed in detail in Bills Digest No. 55 2000-01, *Family Law Legislation Amendment (Superannuation) Bill 2000*.²

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The Government also made consequential amendments to relevant taxation legislation to ensure that appropriate tax treatment is applied to superannuation interests split as a consequence of marriage breakdown. The details of these consequential amendments are discussed in detail in Bills Digest No. 40 2001-02, *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2001*.³

Further legislative changes were required to enable a superannuation interest to be divided on marriage breakdown. That was achieved through the gazetting of the Family Law (Superannuation) Regulations 2001⁴ and the Superannuation Industry (Supervision) Amendment Regulations 2001 (No. 3) 2001.⁵

The amendments in this Bill make consequential amendments to ensure that superannuation interests split under a family law settlement are assessed under social security and veteran's affairs legislation consistently with the current assessment of other income and assets under the means test.

Main Provisions

Schedule 1—Amendment of the *Family Law Act 1975*

Item 1 inserts a new definition of reversionary beneficiary into **proposed subsection 90MD**. The new definition ensures that, for the purposes of Part VIIIIB of the *Family Law Act 1975*, the term includes a person who receives any benefit on the death of a member spouse. This definition is broader than the finance industry's commonly used meaning (a recipient of an on-going pension or commuted lump sum).

Item 2 amends **proposed subsection 90MX(3)** to clarify the order of precedence where the one superannuation interest is subject to successive splits. In most situations, a person remarries someone other than the person they have divorced. The legislation currently anticipates the division of superannuation interests where a superannuation fund member has divorced more than once. The amendment clarifies the application of this provision to the (unusual, but possible) situation where parties to a marriage divorce, split their superannuation, re-marry their original spouse, and subsequently separate from the spouse and for a second time wish to split their superannuation.

Schedule 2—Amendment of the *Judges' Pensions Act 1968*

Item 1 inserts **new subsection 21(2)** of the *Judges' Pensions Act 1968*. The new subsection provides an express power to make regulations to prescribe accrued benefit multiples for the purpose of Part VIIIIB of the *Family Law Act 1975*. Where a pension is split under the *Family Law Act 1975* following a marriage breakdown, the Regulations

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provide for a method of determining the accrued benefit multiple consistent with the governing rules of the superannuation fund. *The Judges' Pensions Act 1968* does not provide for calculating accrued benefit multiples. The new subsection will provide for a method to be included in Regulations.

Schedule 3—Amendment of the *Social Security Act 1991*

This schedule makes amendments to ensure that income stream payments from superannuation funds that have been split under Part VIII B of the *Family Law Act 1975* be treated consistently with other income and assets under the social security means test.

Items 12 and 13 insert **new subparagraphs 9A(2)(h)(iva)** and **9B(2)(h)(iva)** respectively. The amendments enable superannuation income streams (pensions or annuities) paid to a spouse or former spouse in the form of a commutation following a superannuation split under the *Family Law Act 1975* to retain their assets test exemption under the social security means test.

Item 14 inserts **new sections 9C** and **9D** into the *Social Security Act 1991*. **New section 9C** contains definitions for the following terms:

- "Original family law affected income stream" means an income stream purchased by a superannuation fund member from a superannuation fund
- "Primary family law affected income stream" means that part of the "original family law affected income stream" paid to the member of the superannuation fund under a payment split under Part VIII B of the *Family Law Act 1975*
- "Secondary family law affected income stream" means that part of the "original family law affected income stream" paid to the member's spouse or former spouse (non-superannuation fund member) under a payment split under Part VIII B of the *Family Law Act 1975*
- "Family law affected income stream" means "primary family law affected income stream" and "secondary family law affected income stream."

New section 9D provides that where there is a "primary family law affected income stream" that meets the requirements of an asset tested income stream (long or short term) under the *Social Security Act 1991*, the "secondary family law affected income stream" will also meet those requirements. Where there is no "primary family law affected income stream," the "secondary family law affected income stream" is treated in the same manner as the "primary family law affected income stream," if there had been one.

Item 20 amends the provisions in the *Social Security Act 1991* that apply the income test to "family law affected income streams." **New sections 1099DB** and **1099DC** provide that where a "family law affected income stream" is an assets test exempt income stream or,

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assets test exempt income stream (long term), under the Act the income streams will be taken to be received according to guidelines made by the Secretary.

New section 1099DD provides that the Secretary's guidelines are disallowable instruments under the *Acts Interpretation Act 1901*.

Schedule 4—Amendment of the *Veterans' Entitlements Act 1986*

This schedule makes amendments to ensure that income stream payments from superannuation funds that have been split under Part VIII B of the *Family Law Act 1975* be treated consistently with other income and assets under the social security means test.

Items 12 and 13 insert **new subparagraphs 5JA(2)(h)(iva) and 5JB(2)(h)(iva)** respectively. The subparagraphs enable superannuation income streams (pensions or annuities) paid to a spouse or former spouse in the form of a commutation following a superannuation split under the *Family Law Act 1975* to retain their assets test exemption under the veterans' entitlements means test.

Item 14 inserts **new sections 5JC and 5JD** into the *Veterans' Entitlements Act 1986*. **New section 5JC** contains the following definitions:

- "Original family law affected income stream" means an income stream purchased by a superannuation fund member from a superannuation fund.
- "Primary family law affected income stream" means that part of the "original family law affected income stream" paid to the member of the superannuation fund under a payment split under Part VIII B of the *Family Law Act 1975*
- "Secondary family law affected income stream" means that part of the "original family law affected income stream" paid to the member's spouse or former spouse (non-superannuation fund member) under a payment split under Part VIII B of the *Family Law Act 1975*.
- "Family law affected income stream" means "primary family law affected income stream" and "secondary family law affected income stream."

New section 5JD provides that where there is a "primary family law affected income stream" that meets the requirements of an asset tested income stream (long or short term) under the *Veterans' Entitlements Act 1986*, the "secondary family law affected income stream" will also meet those requirements. Where there is no "primary family law affected income stream," the "secondary family law affected income stream" is treated in the same manner as the "primary family law affected income stream," if there had been one.

Item 20 amends the provisions in the *Veterans' Entitlements Act 1986* that apply the income test to "family law affected income streams." **New sections 46ZA and 46ZB** provide that where a "family law affected income stream" is an assets test exempt income

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stream or, assets test exempt income stream (long term), under the Act the income streams will be taken to be received according to guidelines made by the Repatriation Commission.

New section 46ZC provides that the Repatriation Commission's guidelines are disallowable instruments under the *Acts Interpretation Act 1901*.

Endnotes

- 1 Attorney-General's Department, Family Law and Legal Assistance Division, <http://www.ag.gov.au/superannuation/welcome.html> .
- 2 This Digest can be accessed via the following link:
<http://www.aph.gov.au/library/pubs/bd/2000-01/01BD055.PDF>
- 3 This Digest can be accessed via the following link:
<http://www.aph.gov.au/library/pubs/bd/2001-02/02bd040.pdf> .
- 4 See http://www.ag.gov.au/superannuation/second/family_lawregs.htm .
- 5 See <http://scaleplus.law.gov.au/html/numrul/18/9289/top.htm> .

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