



Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004

No. 58, 2004

**An Act to amend legislation relating to
superannuation, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004

No. 58, 2004

An Act to amend legislation relating to superannuation, and for related purposes

[Assented to 4 May 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Legislation
Amendment (Family Law and Other Matters) Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 5 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	4 May 2004
2. Schedule 1	The 14th day after the day on which this Act receives the Royal Assent	18 May 2004
3. Schedule 2	The day on which this Act receives the Royal Assent	4 May 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application of family law interest-splitting amendments

- (1) The family law interest-splitting amendments apply to:
- any splitting agreement, or splitting order, that has an operative time after the commencement of Schedule 1; and
 - a splitting agreement, or splitting order, with an earlier operative time, if no benefits had become payable before the
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commencement of Schedule 1 in respect of the superannuation interest to which the agreement or order relates.

(2) In this section:

family law interest-splitting amendments means the amendments made by Schedule 1, other than items 24 and 34.

5 Application of indexation amendments

The amendments made by Schedule 2 apply:

- (a) for the purpose of working out an increase in the rate of a pension benefit that is payable immediately before:
 - (i) the prescribed half-year beginning on 1 January 2004; and
 - (ii) each subsequent prescribed half-year; and
- (b) for any other purpose related to the purpose mentioned in paragraph (a).

Schedule 1—Family law superannuation splitting and other matters

Defence Act 1903

1 At the end of section 52

Add:

- (5) Determinations may make provision for, and in relation to, reducing a superannuation benefit under the determinations in a case where a person becomes entitled to benefits under the *Military Superannuation and Benefits Act 1991* in circumstances mentioned in subparagraph 5A(1)(b)(i) of that Act.

Note: Section 5A of the *Military Superannuation and Benefits Act 1991* provides for superannuation benefits for a non-member spouse in respect of splitting agreements and splitting orders under the *Family Law Act 1975*.

- (6) Reductions referred to in subsection (5) are to be disregarded in applying subsection (3A).

Defence Force Retirement and Death Benefits Act 1973

2 At the end of section 6C

Add:

- (4) Reductions under Division 3 of Part VIA are to be disregarded in applying subsection (3) of this section.

3 After Part VI

Insert:

Part VIA—Family law superannuation splitting

Division 1—Preliminary

49A Definitions

In this Part, unless the contrary intention appears:

associate pension means associate pension under section 49B.

base amount means:

- (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

family law value means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for the purposes of paragraph 90MT(2)(a) of the *Family Law Act 1975*. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-standard pension means a pension benefit other than standard pension.

operative time, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIII B of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

Orders means Orders under section 49F.

original interest means a superannuation interest to which section 49B applies.

payment split has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

scheme value means the amount determined under the Orders.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

standard pension means any of the following:

- (a) retirement pay;
- (b) invalidity benefit;
- (c) pension under section 38 or 39;
- (d) pension under section 43A;
- (e) associate pension.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

transfer amount means:

- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
 - (i) the family law value; and
 - (ii) the scheme value; or

- (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or
- (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

Division 2—Benefits for non-member spouse

49B Associate pension for non-member spouse if operative time in payment phase

- (1) This section applies to a superannuation interest (the *original interest*) if:
 - (a) the Authority receives a splitting agreement or splitting order in respect of the original interest; and
 - (b) the original interest is not an entitlement to pension under section 42 or 43; and
 - (c) the member spouse and the non-member spouse are both alive at the operative time; and
 - (d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.
- (2) If, at the operative time, standard pension is payable in respect of the original interest, then the non-member spouse is entitled to associate pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

Note: If standard pension is not payable at the operative time in respect of the original interest, then the non-member spouse will be entitled to benefits under the *Military Superannuation and Benefits Act 1991*.

49C Commutation of small associate pension

- (1) If the annual rate of associate pension to which the non-member spouse becomes entitled is less than the amount determined under the Orders, then the non-member spouse may elect to commute the pension.
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- (2) The election must be made in writing to the Chairman not later than 3 months after the non-member spouse becomes entitled to the pension.
- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to a lump sum equal to the transfer amount.

Division 3—Reduction of benefits for member spouse

49D Operative time during growth phase—reduction of later standard pension or lump sum amount

- (1) If:
 - (a) at the operative time, standard pension is not payable in respect of the original interest; and
 - (b) after the operative time, standard pension becomes payable to the member spouse in respect of the original interest;then the annual rate of that standard pension is reduced to the amount calculated under the Orders.

Note: If the member spouse dies before becoming entitled to standard pension, then subsection (1) will nevertheless result in an indirect reduction of any widow's pension that becomes payable. This happens because the amount of the widow's pension is based on the amount of invalidity pay (a standard pension) that would have become payable to the member spouse at the time of death.

- (2) A reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse's death.

- (3) If:
 - (a) at the operative time, standard pension is not payable in respect of the original interest; and
 - (b) after the operative time, a lump sum amount becomes payable, in respect of the original interest, under section 32, 48, 48A, 56, 57 or 77;

then that lump sum amount is reduced to the amount calculated under the Orders.

49E Operative time during payment phase—reduction of standard pension

- (1) If, at the operative time, standard pension is payable to the member spouse in respect of the original interest, then the annual rate of that pension is reduced to the amount calculated under the Orders.
- (2) A reduction under this section is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse's death.

Division 4—Miscellaneous

49F Ministerial Orders

- (1) The Minister may make Orders prescribing matters required or permitted by this Part to be prescribed.
- (2) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) An Order is taken to be a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

Defence Forces Retirement Benefits Act 1948

4 Before subsection 57(1)

Insert:

- (1AA) A male person is not to be treated as a male pensioner for the purposes of this section merely because the person, at the time of his death, was receiving associate pension under Part VIA.

5 At the end of section 58

Add:

- (3) A person is not to be treated as a pensioner for the purposes of this section merely because the person, at the time of his or her death, was receiving associate pension under Part VIA.

6 After Part V

Insert:

Part VIA—Family law superannuation splitting

Division 1—Preliminary

80A Definitions

In this Part, unless the contrary intention appears:

associate pension means associate pension under section 80B.

base amount means:

- (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

Chairman means the Chairman of the Authority.

family law value means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for the purposes of paragraph 90MT(2)(a) of the *Family Law Act 1975*. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-standard pension means pension under this Act other than standard pension.

operative time, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIIIIB of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

Orders means Orders under section 80E.

original interest means a superannuation interest to which section 80B applies.

payment split has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

scheme value means the amount determined under the Orders.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

standard pension means any of the following:

- (a) pension under section 38, 39, 41 or 43;
- (b) invalidity benefit;
- (c) pension under section 55 or 57;
- (d) associate pension.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

transfer amount means:

- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
 - (i) the family law value; and
 - (ii) the scheme value; or
- (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or
- (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

Division 2—Benefits for non-member spouse

80B Associate pension for non-member spouse

- (1) This section applies to a superannuation interest under this Act (the *original interest*) if:
 - (a) the Chairman receives a splitting agreement or splitting order in respect of the original interest; and
 - (b) the original interest is not an entitlement to pension under paragraph 57(1)(b), subsection 57(4) or (5) or section 58; and
 - (c) the member spouse and the non-member spouse are both alive at the operative time; and
 - (d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.
- (2) The non-member spouse is entitled to associate pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

80C Commutation of small associate pension

- (1) If the annual rate of associate pension to which the non-member spouse becomes entitled is less than the amount determined under

the Orders, then the non-member spouse may elect to commute the pension.

- (2) The election must be made in writing to the Chairman not later than 3 months after the non-member spouse becomes entitled to the pension.
- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to a lump sum equal to the transfer amount.

Division 3—Reduction of benefits for member spouse

80D Reduction of standard pension

- (1) The annual rate of standard pension that is payable at the operative time in respect of the original interest is reduced to the amount calculated under the Orders.
- (2) A reduction under this section is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under paragraph 57(1)(b) payable in respect of a child of the member spouse after the member spouse's death.

Division 4—Miscellaneous

80E Ministerial Orders

- (1) The Minister may make Orders prescribing matters required or permitted by this Part to be prescribed.
- (2) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) An Order is taken to be a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

7 Subsection 83(1) (at the end of the definition of *pension*)

Add “, but does not include associate pension under Part VIA of this Act”.

Military Superannuation and Benefits Act 1991

8 Subsection 3(1)

Insert:

associate benefit means a benefit that is payable under provisions of the Trust Deed that are authorised by section 5A.

9 At the end of Part 2

Add:

5A Amendments of Trust Deed to implement family law interest splitting

- (1) Without limiting subsection 5(1), amendments under that subsection:
- (a) may provide that, when a splitting agreement or splitting order is received by the Board in respect of a superannuation interest under this Act:
 - (i) the non-member spouse is entitled to benefits determined in accordance with the Rules; and
 - (ii) the benefits of the member spouse are reduced in accordance with the Rules; and
 - (b) may provide that, when a splitting agreement or splitting order is received by the Board in respect of a superannuation interest under:
 - (i) section 52 of the *Defence Act 1903*; or
 - (ii) the *Defence Force Retirement and Death Benefits Act 1973*;the non-member spouse is entitled to benefits determined in accordance with the Rules; and
 - (c) may make any other provision that is related to, or consequential on, provisions referred to in paragraph (a) or (b).

- (2) Subparagraph (1)(b)(ii) does not apply in a case covered by subsection 49B(2) of the *Defence Force Retirement and Death Benefits Act 1973*.
- (3) Subsection 48(2) of the *Acts Interpretation Act 1901* does not apply to amendments referred to in subsection (1) of this section.
- (4) In this section:

member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split (within the meaning of Part VIIIIB of the *Family Law Act 1975*).

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

10 After section 16

Insert:

16A Payments relating to associate benefits

- (1) Where an associate benefit becomes payable under the Rules, the Commonwealth must pay the benefit to such person or persons as are appropriate under the Rules.
- (2) The Board must pay to the Commonwealth any amount that the Board is required under the Rules to pay to the Commonwealth in respect of an associate benefit.

11 After subsection 46(1)

Insert:

- (1A) A person who is, or has ceased to be, an associate is subject to the Rules to the extent that they are applicable in relation to the person. For this purpose, *associate* means a person to whom an associate benefit is payable.

Parliamentary Contributory Superannuation Act 1948

11A Subsection 4(1) (at the end of the definition of *annuity*)

Add “, including an associate annuity under section 22CD or 22CE”.

11B At the end of section 4E

Add:

- (4) Reductions under Division 3 of Part VAA are to be disregarded in applying subsection (3).

11C After subsection 18(8A)

Insert:

- (8AAA) Any reduction under section 22CH is to be disregarded in applying the definition of *basic rate* in subsection (8A) of this section.

11D After subsection 18(8AC)

Insert:

- (8ACA) Any reduction under section 22CH is to be disregarded in applying the definition of *basic rate* in subsection (8AC) of this section.

11E After subsection 18B(15)

Insert:

- (15A) Any reduction under section 22CH is to be disregarded in applying the definition of *basic rate* in subsection (15) of this section.

11F After Part V

Insert:

Part VAA—Family law superannuation splitting

Division 1—Preliminary

22CA Definitions

In this Part, unless the contrary intention appears:

additional service factor at the operative time has the meaning given by section 22CC.

additional service factor at the payment time has the meaning given by section 22CC.

affected benefit means the affected benefit referred to in section 22CH.

applicable additional percentage means the percentage that is applied to the rate of salary, or allowance by way of salary, payable in respect of an office in order to calculate:

- (a) the annual rate of an additional retiring allowance; or
- (b) the annual rate of an annuity.

applicable basic percentage means the percentage that is applied to the rate of parliamentary allowance in order to calculate:

- (a) the annual rate of a retiring allowance (other than additional retiring allowance); or
- (b) the annual rate of an annuity.

associate annuity means an annuity under section 22CD or 22CE.

associate deferred annuity means an associate deferred annuity under section 22CE.

associate immediate annuity means an associate immediate annuity under section 22CD.

base amount means:

- (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or

(b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

basic service factor at the operative time has the meaning given by section 22CB.

basic service factor at the payment time has the meaning given by section 22CB.

family law value means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for the purposes of paragraph 90MT(2)(a) of the *Family Law Act 1975*. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-standard annuity means an annuity other than a standard allowance or annuity.

operative time, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIII B of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

Orders means Orders under section 22CK.

original interest means a superannuation interest to which section 22CD applies.

payment split has the same meaning as in Part VIII B of the *Family Law Act 1975*.

payment time, in relation to the affected benefit, means the time when the benefit becomes payable.

scheme value means the amount determined under the Orders.

Secretary means the Secretary of the Department.

section 16A amount means the total referred to in paragraph 16A(1)(c).

section 22Q amount means the employer component, or the sum of the employer components, referred to in paragraph 22Q(5)(c).

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

standard allowance or annuity means:

- (a) a retiring allowance; or
- (b) an annuity, other than an annuity under section 19AA.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

transfer amount means:

- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
 - (i) the family law value; and
 - (ii) the scheme value; or
- (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or

- (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

transfer factor means the number calculated by dividing the number of whole dollars in the transfer amount by the number of whole dollars in the scheme value.

22CB Basic service factor

- (1) In calculating the annual rate of the affected benefit in accordance with section 22CH, the *basic service factor at the payment time* and the *basic service factor at the operative time* are worked out under this section.

Period of service at least 8 years

- (2) If the period of service is at least 8 years, then:
- (a) the *basic service factor at the payment time* is the number calculated, by reference to the member spouse's period of service before the payment time, by adding:
- (i) for service that occurred within the first 8 years—
0.0625 for each full year; and
 - (ii) for service that occurred within the next 10 years:
 - (A) 0.025 for each full year; and
 - (B) 0.025/365 for each left-over day; and
- (b) the *basic service factor at the operative time* is the number calculated, by reference to the member spouse's period of service before the operative time, by adding:
- (i) for service that occurred within the first 8 years:
 - (A) 0.0625 for each full year; and
 - (B) 0.0625/365 for each left-over day; and
 - (ii) for service that occurred within the next 10 years:
 - (A) 0.025 for each full year; and
 - (B) 0.025/365 for each left-over day.

Period of service less than 8 years—retiring allowance (not under subsection 18(2AA))

- (3) If the period of service is less than 8 years and the affected benefit is a retiring allowance (other than an allowance under subsection 18(2AA)), then:
- (a) the **basic service factor at the payment time** is 0.5; and
 - (b) the **basic service factor at the operative time** is the number calculated using the formula:

$$0.5 \times \frac{\text{Days in period of service before operative time}}{\text{Days in period of service}}$$

Period of service less than 8 years—retiring allowance under paragraph 18(2AA)(b) or (c) or annuity under paragraph 19(1)(a)

- (4) If the period of service is less than 8 years and the affected benefit is a retiring allowance under paragraph 18(2AA)(b) or (c) or an annuity under paragraph 19(1)(a), then:
- (a) the **basic service factor at the payment time** is 0.5; and
 - (b) the **basic service factor at the operative time** is the number calculated, by reference to the member spouse's period of service before the operative time, by adding:
 - (i) 0.0625 for each full year; and
 - (ii) 0.0625/365 for each left-over day.

Period of service less than 8 years—retiring allowance under paragraph 18(2AA)(d)

- (5) If the period of service is less than 8 years and the affected benefit is a retiring allowance under paragraph 18(2AA)(d), then:
- (a) the **basic service factor at the payment time** is 0.3; and
 - (b) the **basic service factor at the operative time** is the number calculated, by reference to the member spouse's period of service before the operative time, by adding:
 - (i) 0.0375 for each full year; and
 - (ii) 0.0375/365 for each left-over day.

22CC Additional service factor

- (1) In calculating the annual rate of the affected benefit in accordance with section 22CH, the ***additional service factor at the payment time*** and the ***additional service factor at the operative time*** are worked out under this section.

Where subsection 18(10B) does not apply

- (2) If subsection 18(10B) does not apply, then:
- (a) for each office, the ***additional service factor at the payment time*** is the number calculated, by reference to the member spouse's period of service in the office before the payment time, by adding:
 - (i) 0.0625 for each full year; and
 - (ii) 0.0625/365 for each left-over day; and
 - (b) for each office, the ***additional service factor at the operative time*** is the number calculated, by reference to the member spouse's period of service in the office before the operative time, by adding:
 - (i) 0.0625 for each full year; and
 - (ii) 0.0625/365 for each left-over day.

Where paragraph 18(10B)(a) applies (one office)

- (3) If paragraph 18(10B)(a) applies, then:
- (a) the ***additional service factor at the payment time*** is 0.75; and
 - (b) the ***additional service factor at the operative time*** is:
 - (i) if the period of service in the office is at least 12 years—0.75; or
 - (ii) otherwise—the number calculated, by reference to the member spouse's period of service in the office before the operative time, by adding:
 - (A) 0.0625 for each full year; and
 - (B) 0.0625/365 for each left-over day.

Where paragraph 18(10B)(b) applies (highest-paid office)

- (4) If paragraph 18(10B)(b) applies, then:
- (a) the ***additional service factor at the payment time*** is 0.75; and
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- (b) if, at the operative time, the member spouse is not entitled to parliamentary allowance, then the ***additional service factor at the operative time*** for the highest-paid office to which paragraph 18(10B)(b) applies is 0.75; and
 - (c) if, at the operative time, the member spouse is entitled to parliamentary allowance, then the ***additional service factor at the operative time*** for the highest-paid office to which paragraph 18(10B)(b) applies is worked out as follows:
 - (i) calculate a factor under paragraph (2)(b) of this section for each office referred to in paragraph 18(10B)(b), other than an office for which the period of service began after the operative time;
 - (ii) for each such factor, calculate a weighted factor under subsection (6) of this section;
 - (iii) add together the weighted factors calculated under subparagraph (ii) of this paragraph.
- (5) If the additional service factor at the operative time, worked out under paragraph (4)(c), would be more than 0.75, then it is taken to be 0.75.
- (6) The weighted factor is calculated using the formula:

$$\text{Factor} \times \frac{\text{Salary for the office}}{\text{Salary for highest office}}$$

where:

salary for highest office means the number of whole dollars in the salary applicable at the payment time to the office referred to in paragraph 18(10B)(b) that had the highest rate of salary, or allowance by way of salary, at the payment time.

salary for the office means the number of whole dollars in the salary, or allowance by way of salary, applicable to the office at the payment time.

Division 2—Benefits for non-member spouse

22CD Associate annuity for non-member spouse

- (1) This section applies to a superannuation interest under this Act (the *original interest*) if:
 - (a) the Secretary receives a splitting agreement or splitting order in respect of the original interest; and
 - (b) the original interest is not an entitlement to an annuity under section 19AA; and
 - (c) the member spouse and the non-member spouse are both alive at the operative time; and
 - (d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.

Immediate annuity if operative time in payment phase

- (2) If, at the operative time, standard allowance or annuity is payable in respect of the original interest, then the non-member spouse is entitled to an associate immediate annuity from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

Deferred annuity if operative time in growth phase

- (3) If, at the operative time, standard allowance or annuity is not payable in respect of the original interest, then the non-member spouse is entitled to an associate deferred annuity in accordance with section 22CE.

22CE Associate deferred annuity

- (1) The associate deferred annuity is payable at an annual rate calculated under the Orders by reference to the transfer amount.
- (2) The annuity is payable from the later of:
 - (a) the operative time; and
 - (b) the earliest of the following dates:

- (i) if the Trust is satisfied that the non-member spouse has become permanently incapacitated—the date that the Trust considers to have been the date on which the person became permanently incapacitated;
 - (ii) a date notified to the Secretary under subsection (3);
 - (iii) the 65th anniversary of the non-member spouse's birth.
- (3) The non-member spouse may give a written notice to the Secretary specifying a date that is not earlier than the 55th anniversary of the non-member spouse's birth. However, the notice has no effect if section 26B would prevent the annuity being paid to the non-member spouse from the specified date.

Note: Section 26B applies the preservation requirements of the Superannuation Industry (Supervision) Regulations.
- (4) The annuity is not payable unless:
 - (a) a written application has been made requesting payment of the benefit; and
 - (b) the applicant has provided any information that is necessary to determine whether the benefit is payable.
- (5) An application for payment on the ground of incapacity must be accompanied by the following:
 - (a) a certificate given by a medical practitioner nominated by the Trust;
 - (b) a certificate given by a medical practitioner nominated by, or on behalf of, the non-member spouse;
 - (c) such additional information or documents as the Trust requires.
- (6) The certificates mentioned in paragraphs (5)(a) and (b) must include a statement to the effect that, in the opinion of the medical practitioner concerned, the non-member spouse is permanently incapacitated, as defined in this section.
- (7) If the non-member spouse dies before the annuity becomes payable, an amount calculated under the Orders must be paid to the legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Trust determines.

- (8) For the purposes of this section, a person is *permanently incapacitated* if, and only if, the person suffers from *permanent incapacity* within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*.

22CF Commutation of small associate annuity

- (1) If:
- (a) the annual rate of associate immediate annuity that becomes payable to the non-member spouse is less than the amount determined under the Orders; or
 - (b) the annual rate of associate deferred annuity that becomes payable to the non-member spouse is less than the amount determined under the Orders;
- then the non-member spouse may elect to commute the annuity.
- (2) The election must be made in writing to the Secretary not later than 3 months after the annuity becomes payable.
- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to:
- (a) if paragraph (1)(a) applies—a lump sum equal to the transfer amount; or
 - (b) if paragraph (1)(b) applies—a lump sum calculated under the Orders.

Division 3—Reduction of benefits for member spouse

22CG Operative time during growth phase—reduction of lump sum

- (1) This section applies if:
- (a) at the operative time, standard allowance or annuity is not payable in respect of the original interest; and
 - (b) the original interest is not an entitlement to an associate annuity.
- (2) The contributions in respect of the original interest are reduced, with effect from the operative time, by the amount calculated using the formula:

Contributions at OT × Transfer factor

where:

contributions at OT means the amount of the contributions, ascertained at the operative time.

Note: Under subsections 20A(2) and 22Q(3), certain amounts are deemed to be contributions (in addition to contributions under Part IV).

- (3) Any section 16A amount in respect of the original interest is reduced, with effect from the operative time, by the amount calculated using the formula:

Section 16A amount at OT × Transfer factor

where:

section 16A amount at OT means the section 16A amount, ascertained at the operative time.

- (4) Any section 22Q amount in respect of the original interest is reduced, with effect from the operative time, by the amount calculated using the formula:

Section 22Q amount at OT × Transfer factor

where:

section 22Q amount at OT means the section 22Q amount, ascertained at the operative time.

22CH Operative time during growth phase—reduction of retiring allowance

- (1) This section applies if:
- (a) at the operative time, standard allowance or annuity is not payable in respect of the original interest; and
 - (b) after the operative time, a retiring allowance (the **affected benefit**) becomes payable to the member spouse in respect of the original interest.

Note: If the member spouse dies before becoming entitled to a retiring allowance, then subsection (1) will nevertheless result in an indirect reduction of any annuity under paragraph 19(1)(a) to a surviving spouse. This happens because the amount of that annuity is based on the amount of retiring allowance that would have become payable to the member spouse if he or she had not died.

Reduction of basic percentage

- (2) In calculating the annual rate of the affected benefit, the applicable basic percentage is replaced by the percentage calculated using the formula:

$$\left(\text{BSF at PT} - \left(\text{BSF at OT} \times \text{Transfer factor} \right) \right) \times 100$$

where:

BSF at OT means the basic service factor at the operative time.

BSF at PT means the basic service factor at the payment time.

Reduction of additional percentage

- (3) In calculating the annual rate of the affected benefit, each applicable additional percentage is replaced by the percentage calculated using the formula:

$$\left(\text{ASF at PT} - \left(\text{ASF at OT} \times \text{Transfer factor} \right) \right) \times 100$$

where:

ASF at OT means the additional service factor at the operative time for the office concerned.

ASF at PT means the additional service factor at the payment time for the office concerned.

- (4) Subsection (3) does not apply to an applicable additional percentage for an office if:
- (a) the period of service in the office began after the operative time; and
 - (b) paragraph 18(10B)(b) does not apply.

Multiple interest splits for same original interest

- (5) If, before the affected benefit becomes payable, the original interest has been split more than once (that is to say, section 22CD has applied more than once), then the calculations under subsections (2) and (3) are modified as set out in subsections (6) and (7).

Note: If the same superannuation interest is subject to 2 or more payment splits, then section 22CD applies separately in relation to each of those splits.

- (6) In applying the formula in subsection (2), the component (BSF at OT × Transfer factor) is to be replaced by the number calculated using the following steps, based on the chronological order of the operative times (starting with the earliest):

- (a) calculate a factor (the *interim factor*) for the first split using the formula:

$$\text{BSF at OT for first split} \times \text{Transfer factor for first split}$$

- (b) calculate a factor (the *interim factor*) for the next split (the *current split*), using the formula:

$$\left(\text{BSF at OT for current split} - \text{Interim factor for previous split} \right) \times \text{Transfer factor for current split}$$

- (c) calculate a factor for each remaining split (if any), using the formula in paragraph (b);
 (d) add together the factors calculated under paragraphs (a) to (c).

Example: Assume 2 splits, with the first split having a basic service factor (BSF) of 0.4 and a transfer factor of 0.5 and the second split having a basic service factor of 0.6 and a transfer factor of 0.5. Applying the above steps, the replacement number for the formula is 0.4, that is:

$$(0.4 \times 0.5) + ((0.6 - 0.4) \times 0.5)$$

- (7) In applying the formula in subsection (3), the component (ASF at OT × Transfer factor) is to be replaced by the number calculated using the following steps, based on the chronological order of the operative times (starting with the earliest):

- (a) calculate a factor (the *interim factor*) for the first split using the formula:

ASF at OT for first split \times Transfer factor for first split

- (b) calculate a factor (the *interim factor*) for the next split (the *current split*), using the formula:

$$\left(\text{ASF at OT for current split} - \text{Interim factor for previous split} \right) \times \text{Transfer factor for current split}$$

- (c) calculate a factor for each remaining split (if any), using the formula in paragraph (b);
(d) add together the factors calculated under paragraphs (a) to (c).

Reduction not to affect later non-standard annuity

- (8) A reduction under this section is to be disregarded in calculating the amount of any non-standard annuity that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of annuity payable under section 19AA in respect of a child of the member spouse after the member spouse's death.

22CI Operative time during growth phase—reduction where original interest is entitlement to associate deferred annuity

- (1) This section applies if:
- (a) at the operative time, standard allowance or annuity is not payable in respect of the original interest; and
 - (b) the original interest is an entitlement to an associate deferred annuity.
- (2) The annual rate of that associate annuity (when it becomes payable) is reduced to the amount calculated under the Orders.

Note: Although an associate immediate annuity becomes payable at the operative time, an associate deferred annuity will often not become payable until some time after the operative time.

22CJ Operative time during payment phase—reduction of standard allowance or annuity

- (1) If, at the operative time, standard allowance or annuity is payable in respect of the original interest, then the annual rate of that allowance or annuity is reduced to the amount calculated under the Orders.
- (2) A reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard annuity that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of annuity payable under section 19AA in respect of a child of the member spouse after the member spouse's death.

Division 4—Miscellaneous

22CK Ministerial Orders

- (1) The Minister may make Orders prescribing matters required or permitted by this Part to be prescribed.
- (2) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) An Order is taken to be a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

Superannuation Act 1922

12 Subsection 4(1)

Insert:

pension includes associate pension under section 93DB.

13 After subsection 47(1)

Insert:

- (1A) This section does not apply to an associate pension under Part VA that a deceased pensioner was receiving at the time of his or her death.

14 At the end of section 61

Add:

- (3) This section does not apply to a pension that has been reduced under section 93DD.

15 After Part V

Insert:

Part VA—Family law superannuation splitting

Division 1—Preliminary

93DA Definitions

In this Part, unless the contrary intention appears:

associate pension means an associate pension under section 93DB.

base amount means:

- (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

family law value means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for the purposes of paragraph 90MT(2)(a) of the *Family Law Act 1975*. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-standard pension means a pension under this Act other than a standard pension.

operative time, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIIIIB of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

Orders means Orders under section 93DE.

original interest means a superannuation interest to which section 93DB applies.

payment split has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

standard pension means any of the following:

- (a) a pension under section 37 or 38;
- (b) a pension under section 46, section 47 (other than subsection (4)), section 48AA or section 48AB (other than in relation to subsection 47(4) or section 48);
- (c) a benefit under subsection 48C(3) that consists of regular payments;
- (d) an associate pension.

superannuation interest has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

transfer amount means:

- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the family law value; or
- (b) otherwise—the base amount.

Division 2—Benefits for non-member spouse

93DB Associate pension for non-member spouse

- (1) This section applies to a superannuation interest under this Act (the *original interest*) if:
 - (a) the Commissioner receives a splitting agreement or splitting order in respect of the original interest; and
 - (b) the original interest is not:
 - (i) an entitlement to a pension under subsection 47(4) or section 48; or
 - (ii) an entitlement to deferred benefits under section 119T; and
 - (c) the member spouse and the non-member spouse are both alive at the operative time; and
 - (d) if a base amount applies—the base amount at the operative time is not more than the family law value.
- (2) The non-member spouse is entitled to an associate pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

93DC Commutation of small associate pension

- (1) If the annual rate of associate pension to which the non-member spouse becomes entitled is less than the amount determined under the Orders, then the non-member spouse may elect to commute the pension.

- (2) The election must be made in writing to the Commissioner not later than 3 months after the non-member spouse becomes entitled to the pension.
- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to a lump sum equal to the transfer amount.

Division 3—Reduction of benefits for member spouse

93DD Reduction of standard pension

- (1) The annual rate of the standard pension that is payable at the operative time in respect of the original interest is reduced to the amount calculated under the Orders.
- (2) The reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of a pension under section 48 payable in respect of a child of the member spouse after the member spouse's death.

Division 4—Miscellaneous

93DE Ministerial Orders

- (1) The Minister may make Orders prescribing matters required or permitted by this Part to be prescribed.
- (2) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) An Order is taken to be a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

Superannuation Act 1976

16 Subsection 3(1)

Insert:

associate member means a person who is entitled to a benefit under section 146MB or 146MC.

17 Subparagraph 27C(1)(a)(ii)

After “eligible employees”, insert “and associate members”.

18 Paragraph 27C(2)(d)

After “eligible employees”, insert “and associate members”.

19 Paragraph 54JA(1)(c)

After “section 138”, insert “or 146MC”.

20 At the end of section 80A

Add:

- (4) Reductions under Division 3 of Part IXB are to be disregarded in applying subsection (3) of this section.

21 After subsection 110SE(3)

Insert:

- (3A) Reductions under Division 3 of Part IXB are to be disregarded in applying subsection (3) of this section.

22 After Part IXA

Insert:

Part IXB—Family law superannuation splitting

Division 1—Preliminary

146MA Definitions

In this Part, unless the contrary intention appears:

additional pension means any of the following:

- (a) additional age retirement pension referred to in section 55 or 136;

- (b) additional early retirement pension referred to in section 59 or 136;
- (c) spouse's additional pension referred to in section 89, 93 or 136;
- (d) associate additional pension.

associate additional pension means associate additional pension under section 146MB.

associate deferred benefits means associate deferred benefits under section 146MC.

associate deferred pension means associate deferred pension under section 146MC.

associate standard pension means associate standard pension under section 146MB.

base amount means:

- (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

basic contributions amount means the amount determined under the Orders.

basic contributions component means the amount calculated by multiplying the basic contributions amount by the transfer factor.

employer contributions amount means the amount determined under the Orders.

employer contributions component means the amount calculated by multiplying the employer contributions amount by the transfer factor.

family law value means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for the purposes of paragraph 90MT(2)(a) of the *Family Law Act 1975*. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

funded component means the sum of the following amounts:

- (a) the basic contributions component;
- (b) the supplementary contributions component;
- (c) the employer contributions component;
- (d) the section 110SL component;
- (e) the section 130B component.

member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

non-standard pension means pension under this Act other than:

- (a) standard pension; or
- (b) additional pension.

operative time, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIIIIB of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

Orders means Orders under section 146MH.

original interest means a superannuation interest to which section 146MB applies.

payment split has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

scheme value means the amount determined under the Orders.

section 110SL amount means the amount determined under the Orders.

section 110SL component means the amount calculated by multiplying the section 110SL amount by the transfer factor.

section 130B amount means the amount determined under the Orders.

section 130B component means the amount calculated by multiplying the section 130B amount by the transfer factor.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIIIIB of the *Family Law Act 1975*) that provides for a payment split.

splitting order has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

splitting percentage means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

standard pension means any of the following:

- (a) standard age retirement pension referred to in section 55 or 136;
- (b) standard early retirement pension referred to in section 59 or 136;
- (c) invalidity pension;
- (d) spouse's pension, other than spouse's additional pension referred to in section 89, 93 or 136;
- (e) extra spouse's pension;
- (f) associate standard pension;
- (g) associate deferred pension.

superannuation interest has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

supplementary contributions amount means the amount determined under the Orders.

supplementary contributions component means the amount calculated by multiplying the supplementary contributions amount by the transfer factor.

transfer amount means:

- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
 - (i) the family law value; and
 - (ii) the scheme value; or
- (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or
- (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

transfer factor means the number calculated by dividing the number of whole dollars in the transfer amount by the number of whole dollars in the scheme value.

unfunded component means the transfer amount reduced by the funded component.

Division 2—Benefits for non-member spouse

146MB Associate pension or deferred benefits for non-member spouse

- (1) This section applies to a superannuation interest under this Act (the **original interest**) if:
 - (a) the Board receives a splitting agreement or splitting order in respect of the original interest; and
 - (b) the original interest is not an entitlement to an orphan pension; and
 - (c) the member spouse and the non-member spouse are both alive at the operative time; and
 - (d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.

Pension if operative time in payment phase

- (2) If, at the operative time, standard pension is payable in respect of the original interest, then the non-member spouse is entitled to associate standard pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.
- (3) If, at the operative time, additional pension is payable in respect of the original interest, then the non-member spouse is entitled to associate additional pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

Deferred benefits if operative time in growth phase

- (4) If, at the operative time, standard pension is not payable in respect of the original interest, then the non-member spouse is entitled to associate deferred benefits in accordance with section 146MC.

146MC Associate deferred benefits

- (1) Associate deferred benefits consist of:
 - (a) a lump sum equal to the funded component of the transfer amount, together with interest determined under section 154A; and
 - (b) an associate deferred pension at an annual rate calculated under the Orders by reference to the unfunded component.
- (2) The benefits become payable at the later of:
 - (a) the operative time; and
 - (b) the earliest of the following dates:
 - (i) if the Board is satisfied that the non-member spouse has, because of invalidity or physical or mental incapacity, become totally and permanently incapacitated within the meaning of Part IVA—the date that the Board considers to have been the date on which the person became so incapacitated;
 - (ii) a date notified to the Board under subsection (3);
 - (iii) the 65th anniversary of the non-member spouse's birth.
- (3) The non-member spouse may give a written notice to the Board specifying a date that is not earlier than the 55th anniversary of the

non-member spouse's birth. However, the notice has no effect if, under the SIS Act, the associate deferred pension is not permitted to be paid in cash to the non-member spouse from the specified date.

- (4) The benefits are not payable unless:
 - (a) a written application has been made to the Board requesting payment of the benefits; and
 - (b) the applicant has given the Board any information that is necessary to enable the Board to determine whether the benefits are payable.
- (5) If the non-member spouse dies before the benefits become payable, the Board must pay the following amounts to the legal personal representative or, if no legal personal representative can be found, to any individual or individuals that the Board determines:
 - (a) the amount referred to in paragraph (1)(a);
 - (b) an amount calculated under the Orders in respect of the associate deferred pension.
- (6) When the amount referred to in paragraph (1)(a) becomes payable, or is paid under paragraph (5)(a), an equal amount must be paid out of the Superannuation Fund to the Commonwealth.

146MD Commutation of small associate pension

- (1) If:
 - (a) the total annual rate of associate standard pension and associate additional pension (if any) to which the non-member spouse becomes entitled; or
 - (b) the annual rate of associate deferred pension to which the non-member spouse becomes entitled;is less than the amount determined under the Orders, then the non-member spouse may elect to commute those pensions or that pension.
- (2) The election must be made in writing to the Board not later than 3 months after the non-member spouse becomes entitled to the pensions or pension.

- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to:
 - (a) if paragraph (1)(a) applies—a lump sum equal to the transfer amount; or
 - (b) if paragraph (1)(b) applies—a lump sum calculated under the Orders.

Division 3—Reduction of benefits for member spouse

146ME Operative time during growth phase—reduction of benefits

- (1) This section applies if:
 - (a) at the operative time, standard pension is not payable in respect of the original interest; and
 - (b) the original interest is not an entitlement to associate deferred benefits.

Reduction of accumulated contributions etc.

- (2) The following amounts are reduced in respect of the original interest:
 - (a) the accumulated basic contributions are reduced by the sum of:
 - (i) the basic contributions component; and
 - (ii) the interest accruing on that component after the operative time;
 - (b) the accumulated supplementary contributions are reduced by the sum of:
 - (i) the supplementary contributions component; and
 - (ii) the interest accruing on that component after the operative time;
 - (c) the accumulated employer contributions are reduced by the sum of:
 - (i) the employer contributions component; and
 - (ii) the interest accruing on that component after the operative time;
 - (d) any benefit under section 110SN is reduced by the sum of:
 - (i) the section 110SL component; and

- (ii) the interest accruing on that component after the operative time;
- (e) any benefit under section 130D is reduced by the sum of:
 - (i) the section 130B component; and
 - (ii) the interest accruing on that component after the operative time.

Reduction of later salary-based pension

- (3) If, after the operative time, salary-based pension (the **original pension**) becomes payable to the member spouse in respect of the original interest, then the annual rate of the original pension is reduced to the amount worked out using the formula:

$$\text{Final annual rate of salary} \times \left(\frac{\text{Original pension amount}}{\text{Final salary amount}} - \text{Reduction factor} \right)$$

Note: If the member spouse dies without becoming entitled to salary-based pension, then subsection (3) will nevertheless result in an indirect reduction of any spouse's pension that becomes payable to a surviving spouse. This happens because the amount of the spouse's pension is based on the amount of invalidity pension (salary-based pension) that would have become payable to the member spouse at the time of death.

Multiple interest splits for same original interest

- (4) If, before the original pension becomes payable, the original interest has been split more than once (that is to say, section 146MB has applied more than once), then, in applying the formula in subsection (3), the reduction factor is to be replaced by the number calculated using the following steps, based on the chronological order of the operative times (starting with the earliest):
- (a) calculate a factor (the **interim factor**) using the steps in paragraphs (a) to (c) of the definition of **reduction factor** in subsection (6);
 - (b) calculate a factor (the **interim factor**) for the next split (the **current split**), using the formula:

$$\left(\begin{array}{c} \text{Unreduced} \\ \text{current factor} \end{array} - \begin{array}{c} \text{Interim factor} \\ \text{for previous split} \end{array} \right) \times \begin{array}{c} \text{Transfer factor} \\ \text{for current split} \end{array}$$

where:

unreduced current factor means the number calculated using the steps in paragraphs (a) and (b) of the definition of **reduction factor** in subsection (6);

- (c) calculate a factor for each remaining split (if any), using the formula in paragraph (b);
- (d) add together the factors calculated under paragraphs (a) to (c).

Reduction not to affect later non-standard pension

- (5) A reduction under subsection (3) is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of orphan pension payable in respect of a child of the member spouse after the member spouse's death.

- (6) In this section:

age factor means:

- (a) if the age in full years is 65 or more—1; or
- (b) if the age in full years is less than 65—1 reduced by 0.02 per year from 64 years to 60 years, and then by 0.03 per year from 59 years to 31 years.

final salary amount means the number of whole dollars in the member spouse's final annual rate of salary.

original pension amount means the number of whole dollars in the original pension.

reduction factor means the number worked out as follows:

- (a) calculate a number (the **service factor**), by reference to the member spouse's period of contributory service before the operative time, by adding:
 - (i) for service that occurred within the first 20 years:
 - (A) 0.02 for each full year; and

- (B) 0.02/365 for each left-over day; and
- (ii) for service that occurred within the next 10 years:
 - (A) 0.01 for each full year; and
 - (B) 0.01/365 for each left-over day; and
- (iii) for service that occurred within the next 10 years:
 - (A) 0.0025 for each full year; and
 - (B) 0.0025/365 for each left-over day;
- (b) if the original pension is age retirement pension or early retirement pension, multiply the service factor by the age factor (based on the member spouse's age in full years at the time when the original pension became payable);
- (c) multiply the number worked out under paragraphs (a) and (b) by the transfer factor.

salary-based pension means a pension that is calculated by reference to the member spouse's final annual rate of salary.

146MF Operative time during growth phase—reduction where original interest is entitlement to associate deferred benefits

- (1) This section applies if:
 - (a) at the operative time, standard pension is not payable in respect of the original interest; and
 - (b) the original interest is an entitlement to associate deferred benefits.
- (2) The deferred benefits, when they become payable, are reduced in accordance with the Orders.

146MG Operative time during payment phase—reduction of pension

- (1) If, at the operative time, standard pension is payable in respect of the original interest, then the annual rate of that pension is reduced to the amount calculated under the Orders.
- (2) If, at the operative time, additional pension is payable in respect of the original interest, then the annual rate of that pension is reduced to the amount calculated under the Orders.

- (3) A reduction under this section is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of orphan pension payable in respect of the child of the member spouse after the member spouse's death.

Division 4—Miscellaneous

146MH Ministerial Orders

- (1) The Minister may make Orders prescribing matters required or permitted by this Part to be prescribed.
- (2) An Order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) An Order is taken to be a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

23 Subsection 147(1) (after paragraph (e) of the definition of pension to which this Part applies)

Insert:

- (ea) associate additional pension under Part IXB; or

24 Subsection 155C(3) (after paragraph (ca) of the definition of eligible regulatory law)

Insert:

- (cb) the *Family Law Act 1975*; or

25 Section 167AB

Omit “a declaration”, substitute “an Order, declaration”.

26 Section 167AB

Omit “the declaration” (wherever occurring), substitute “the Order, declaration”.

27 At the end of section 168

Add:

- (20) Regulations made within one year after the commencement of this subsection for purposes arising from any amendment of this Act made by the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* may commence on a day:
- (a) earlier than the day on which they are made; but
 - (b) not earlier than the commencement of this subsection.

Superannuation Act 1990

28 Section 3

Insert:

associate benefit means a benefit that is payable under provisions of the Trust Deed that are authorised by subsection 5A(1).

29 After section 5

Insert:

5A Amendments of Trust Deed to implement family law interest splitting

- (1) Without limiting subsection 5(1), amendments under that subsection:
- (a) may provide that, when a splitting agreement or splitting order is received by the Board in respect of a superannuation interest under this Act:
 - (i) the non-member spouse is entitled to benefits determined in accordance with the Rules; and
 - (ii) the benefits of the member spouse are reduced in accordance with the Rules; and
 - (b) may make any other provision that is related to, or consequential on, provisions referred to in paragraph (a).
- (2) Subsection 48(2) of the *Acts Interpretation Act 1901* does not apply to amendments referred to in subsection (1) of this section.
- (3) In this section:

member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

non-member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975*.

splitting agreement means:

- (a) a superannuation agreement (within the meaning of Part VIII B of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIII B of the *Family Law Act 1975*) that provides for a payment split (within the meaning of Part VIII B of the *Family Law Act 1975*).

splitting order has the same meaning as in Part VIII B of the *Family Law Act 1975*.

superannuation interest has the same meaning as in Part VIII B of the *Family Law Act 1975*.

30 After section 16

Insert:

16A Payments relating to associate benefits

- (1) Where an associate benefit becomes payable under the Rules, the Commonwealth must pay the benefit to such person or persons as are appropriate under the Rules.
- (2) The Board must pay to the Commonwealth, out of the PSS Fund, any amount that the Board is required under the Rules to pay to the Commonwealth in respect of an associate benefit.

31 Section 18

Omit “section 16”, substitute “section 16, 16A”.

32 After paragraph 37(1)(b)

Insert:

- (ba) in relation to the payment of associate benefits; or

33 After subsection 42(1)

Insert:

(1A) A person who is, or has ceased to be, an associate is subject to the Rules to the extent that they are applicable in relation to the person. For this purpose, *associate* means a person to whom an associate benefit is payable.

34 Subsection 49(3) (after paragraph (ca) of the definition of *eligible regulatory law*)

Insert:

(cb) the *Family Law Act 1975*; or

Schedule 2—Indexation under the Defence Forces Retirement Benefits Act

Defence Forces Retirement Benefits Act 1948

1 Subsection 83(1)

Insert:

first quarter, in relation to a half-year, means:

- (a) for a half-year beginning on 1 January in a year—the March quarter of the year; and
- (b) for a half-year beginning on 1 July in a year—the September quarter of the year.

2 Subsection 83(1)

Insert:

half-year means a period of 6 months beginning on 1 January or 1 July in any year.

3 Subsection 83(1)

Insert:

prescribed half-year means the half-year commencing on 1 January 2002 or a subsequent half-year.

4 Subsection 83(1) (definition of *prescribed year*)

Repeal the definition.

5 Subsection 83(2)

Omit “March quarter”, substitute “first quarter in a half-year”.

6 Subsection 84(1)

Omit “March quarter” (wherever occurring), substitute “first quarter”.

7 Subsection 84(1)

Omit “year” (wherever occurring), substitute “half-year”.

8 Subsection 84(2)

Omit “year”, substitute “half-year”.

9 Subsection 84(3)

Omit “year” (wherever occurring), substitute “half-year”.

10 Subsection 84(3)

Omit “March quarter” (wherever occurring), substitute “first quarter”.

11 Subsection 84(4)

Omit “year” (wherever occurring), substitute “half-year”.

12 Subsection 84(4)

Omit “30 June” (wherever occurring), substitute “30 June or 31 December (as the case requires)”.

13 Section 84A

Omit “year” (wherever occurring), substitute “half-year”.

14 Subsection 84B(1)

Omit “year” (wherever occurring), substitute “half-year”.

15 Subsection 84B(2)

Omit “16 June in the preceding year”, substitute “16 June or 16 December (as the case requires) in the preceding half-year”.

16 Subsection 84B(3)

Omit “16 June in the preceding year”, substitute “16 June or 16 December (as the case requires) in the preceding half-year”.

17 Subsection 84B(3)

Omit “30 June in the preceding year bears to 12”, substitute “30 June or 31 December (as the case requires) in the preceding half-year bears to 6”.

18 Subsection 84C(2)

Omit “March quarter” (wherever occurring), substitute “first quarter”.

19 Subsection 84C(2)

Omit “year” (wherever occurring), substitute “half-year”.

20 Paragraph 84C(3)(a)

Repeal the paragraph, substitute:

- (a) in relation to the prescribed half-year that commenced on 1 January 2002—the amount that was the existing amount in relation to that provision, as calculated under this section immediately before the commencement of Schedule 2 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*; and

21 Paragraph 84C(3)(b)

Omit “year”, substitute “half-year”.

22 Section 84D

Omit “30 June in a year”, substitute “30 June or 31 December (as the case requires) in a half-year”.

23 Subsection 84E(1)

Omit “year” (wherever occurring), substitute “half-year”.

Note: The heading to section 84E is altered by omitting “year” and substituting “half-year”.

24 Subsection 84E(2)

Repeal the subsection.

25 Subsection 84E(3)

Omit “year” (wherever occurring), substitute “half-year”.

26 Subsection 84F(2)

Omit “year” (wherever occurring), substitute “half-year”.

Note: The heading to section 84F is altered by omitting “year” and substituting “half-year”.

27 Subsection 84F(3)

Repeal the subsection.

28 Sections 84G and 84GA

Repeal the sections.

*[Minister's second reading speech made in—
House of Representatives on 12 December 2002
Senate on 15 May 2003]*

(261/02)