



TRIPLIC

Administering Depar

2002B00341

copy with documents sent to Federal Executive Council Secretariat in connection with the making of this legislation.

**ExCo Secretariat:** Please complete this copy by inserting signatures, date of making and instrument No. and send to:

Legislative Services Unit  
Office of Legislative Drafting  
Attorney-General's Department



## Family Law (Superannuation) Amendment Regulations 2002 (No. 2)<sup>1</sup>

Statutory Rules 2002 No. 2

333

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Family Law Act 1975*.

Dated 19 DEC 2002 2002

**PETER HOLLINGWORTH**  
Governor-General

By His Excellency's Command

DARYL WILLIAMS  
Attorney-General

**1 Name of Regulations**

These Regulations are the *Family Law (Superannuation) Amendment Regulations 2002 (No. 2)*.

2

**2 Commencement**

These Regulations commence on the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*.

**3 Amendment of Family Law (Superannuation) Regulations 2001**

Schedule 1 amends the *Family Law (Superannuation) Regulations 2001* as amended by the *Family Law (Superannuation) Amendment Regulations 2002 (No. 1)*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 3, definition of *accumulation interest***

*omit*

a superannuation interest

*insert*

a superannuation interest, or a component of a superannuation interest,

**[2] Regulation 3, definition of *adjusted base amount***

*omit*

regulation 47.

*insert*

Division 6.1A.

**[3] Regulation 3, definition of *relevant date****omit*

determining the value of

*insert*

determining, under Part 6, an amount in relation to

**[4] Paragraph 6 (5) (b)***omit*

his or legal

*insert*

his or her legal

**[5] Regulation 9A***substitute***9A Meaning of *percentage-only interest* (Act s 90MD)**

For the definition of *percentage-only interest* in section 90MD of the Act, each of the following superannuation interests is prescribed:

- (a) a superannuation interest in the Judges' Pensions Act Scheme;
- (b) a superannuation interest in the scheme constituted by the *Judges' Pensions Act 1953* (NSW);
- (c) a superannuation interest in the Parliamentary Contributory Superannuation Fund, being the Fund continued in existence by subsection 6(1) of the *Parliamentary Contributory Superannuation Act 1970* (Qld).

---

**[6] Paragraph 12 (1) (c)**

*after*

a pension payment

*insert*

(other than a pension payment to which paragraph (ca) applies)

**[7] After paragraph 12 (1) (e)**

*insert*

(ea) if the superannuation interest is in the superannuation scheme constituted by the *Superannuation (State Public Sector) Act 1990* (Qld) — a pension payment to the member spouse that is:

- (i) an income protection benefit paid under section 50 of the *Superannuation (State Public Sector) Deed 1990* (Qld), as in force at the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*; or
- (ii) an incapacity benefit to which the member spouse is entitled under paragraph 136 (b) of the *Superannuation (State Public Sector) Deed 1990* (Qld), as in force at the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*; or
- (iii) an incapacity pension to which the member spouse is entitled under paragraph 199 (b) of the *Superannuation (State Public Sector) Deed 1990* (Qld), as in force at the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001*;

**[8] Subdivision 2.2.1, heading**

*omit*

---

**[9] Subdivision 2.2.2, heading and note**

*omit*

**[10] Regulation 14E**

*omit*

**[11] Subregulation 14F (1)**

*omit*

of a member spouse

*insert*

that is not a percentage-only interest

**[12] Subregulation 14G (1)**

*substitute*

(1) This regulation applies to a superannuation interest (including an interest in respect of which benefits are payable as an allocated pension) if the interest:

(a) is not a percentage-only interest; and

(b) is in a superannuation fund or an approved deposit fund.

**[13] Subregulation 14G (2)**

*omit*

(5) or (6)

*insert*

(5), (5A) or (6)

**[14] Paragraph 14G (5) (a)**

*substitute*

(a) the interest is in a regulated superannuation fund or an approved deposit fund; and

**[15] Paragraph 14G (5) (b)***before*

condition

*insert*

relevant

**[16] After subregulation 14G (5)***insert*

(5A) Subject to subregulation (7), the requirements of this subregulation are satisfied if:

- (a) the interest is in a regulated superannuation fund or an approved deposit fund; and
- (b) at the operative time in relation to the agreement or order, the member spouse was being paid a pension in respect of the interest; and
- (c) the trustee of the plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount equal to the value of the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment.

**[17] Subregulation 14G (7)***omit*

(5) and (6)

*insert*

(5), (5A) and (6)

**[18] Subregulation 14G (8)***substitute*

- (8) For this regulation, the value in respect of a non-member spouse's entitlement in respect of a superannuation interest at the time (the *termination time*) when the trustee carries out an action described in any of subregulations (3) to (6) is:
- (a) if a base amount applies in relation to the interest — the value under subregulation (9) or (10); or
  - (b) if, under subparagraph 90MJ (1) (c) (iii) or paragraph 90MT (1) (b) of the Act, a specified percentage is to apply to all splittable payments in respect of the interest — the value under subregulation (11).
- (9) For paragraph (8) (a), if:
- (a) the termination time occurs before the first splittable payment becomes payable in respect of the superannuation interest; or
  - (b) paragraph (a) does not apply and the amount of the first splittable payment that becomes payable in respect of the superannuation interest is more than the sum of the adjusted base amount applicable to the non-member spouse at the termination time and the amount of any fees payable by the non-member spouse under regulation 59;  
the value at the termination time of the non-member spouse's entitlement in respect of the interest is, as the case requires:
    - (c) the base amount specified by, or calculated in accordance with a method specified by, the relevant agreement or order; or
    - (d) the base amount allocated to the non-member spouse under subsection 90MT (4) of the Act; or
    - (e) the adjusted base amount applicable to the non-member spouse at the termination time.
- (10) For paragraph (8) (a), if paragraph (9) (a) or (b) does not apply in relation to the superannuation interest, the value at the termination time of the non-member spouse's entitlement in respect of the interest is:

$$SP(\text{prop}) \times V$$

where:

*SP(prop)* is the proportion of each second and subsequent splittable payment that the non-member spouse would be entitled to be paid under Part 6.

*V* is the value of the superannuation interest, being the amount in relation to the interest at the termination time, determined in accordance with the relevant method set out in Division 5.2, as if references in that Division to ‘the relevant date’ were references to ‘the termination time’.

- (11) For paragraph (8) (b), the value at the termination time of the non-member spouse’s entitlement in respect of the superannuation interest is:
- (a) if the entitlement is in respect of an interest other than an accumulation interest or an interest in a self managed superannuation fund — the amount in relation to the interest at the termination time that a court would determine in accordance with Part 5, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse under regulation 59; or
  - (b) if the entitlement is in respect of an accumulation interest (other than an interest in a self managed superannuation fund) — the amount in relation to the interest at the termination time that a court would determine in accordance with regulation 28 and subregulation 31 (2A), multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse under regulation 59; or
  - (c) if the entitlement is in respect of an interest in a self managed superannuation fund — the value of the interest at the termination time, determined by the method that the court would consider appropriate if it were determining the value of the interest under paragraph 90MT (2) (b) of the Act, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse under regulation 59.

**[19] Subdivision 2.2.3, heading and note**

*omit*



---

**[20] Regulation 14M**

*omit*

**[21] Subregulation 14N (1)**

*substitute*

- (1) This regulation applies to a superannuation interest that is a percentage-only interest if the interest is in a superannuation fund or an approved deposit fund.

**[22] Subregulation 14N (2)**

*omit*

(4) or (5)

*insert*

(4), (4A) or (5)

**[23] Paragraph 14N (4) (a)**

*substitute*

- (a) the interest is in a regulated superannuation fund or an approved deposit fund; and

**[24] Paragraph 14N (4) (b)**

*before*

condition

*insert*

relevant

**[25] After subregulation 14N (4)***insert*

- (4A) Subject to subregulation (6), the requirements of this subregulation are satisfied if:
- (a) the interest is in a regulated superannuation fund or an approved deposit fund; and
  - (b) at the operative time in relation to the agreement or order, the member spouse was being paid a pension in respect of the interest; and
  - (c) the trustee of the plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount with a value of at least the non-member spouse's entitlement in respect of the superannuation interest at the time of the payment.

**[26] Subregulation 14N (6)***omit*

(4) and (5)

*insert*

(4), (4A) and (5)

**[27] Subregulations 17 (2) to (5)***substitute*

- (2) The amount that the non-member spouse is entitled to be paid in respect of a splittable payment that becomes payable in respect of the superannuation interest is the amount calculated in accordance with Division 6.3.

**[28] Regulation 22, heading***substitute***22 Determination of amount in relation to certain superannuation interests**

---

**[29] Subregulation 22 (1)**

*omit*

the value of

*insert*

an amount in relation to

**[30] Subregulation 22 (2), notes**

*substitute*

*Note 1* See regulation 24 in relation to the determination of an amount in relation to a small superannuation accounts interest.

*Note 2* The court must determine an amount in relation to a superannuation interest of the kind mentioned in paragraph (2) (b) or (c) by such method as it considers appropriate — see paragraph 90MT (2) (b) of the Act.

**[31] Subregulation 24 (2)**

*omit*

The Court must determine the value of the superannuation interest at the relevant date to be the account balance

*insert*

The amount in relation to the interest that the court must determine is the account balance at the relevant date

**[32] Part 5, heading**

*substitute*

**Part 5**                      **Determination of amount in  
relation to certain  
superannuation interests**

---

**[33] Regulation 27**

*omit*

the value of

*insert*

an amount in relation to

**[34] Regulation 28, heading**

*substitute*

**28 Method for determining amount in relation to a superannuation interest — general**

**[35] Subregulation 28 (1)**

*omit*

the value of

*insert*

an amount in relation to

**[36] Subregulation 28 (1), Step 3, paragraph (a)**

*omit*

if the superannuation interest is

*insert*

if the superannuation interest is a defined benefit interest

**[37] Subregulation 28 (1), after Step 3**

*omit*

The resulting amount is the **value of the superannuation interest** at the relevant date.

*insert*

The resulting amount is the **amount in relation to the superannuation interest** at the relevant date.

---

**[38] Regulation 29**

*substitute*

**29 Method for determining gross value — defined benefit interest**

- (1) If the whole of the superannuation interest is a defined benefit interest, the gross value at the relevant date of the interest is to be determined in accordance with this regulation.
- (2) If:
  - (a) under regulation 38, the Minister has approved a method or factors to be used to determine the gross value of the interest; and
  - (b) evidence is before the court in the relevant proceeding of the contents of a statement issued by the trustee of the plan in which the interest is held, being a statement that states the gross value of the interest determined in accordance with the approved method or factors;the gross value of the interest at the relevant date is the value of the interest stated in the statement.
- (3) If:
  - (a) the Minister has not approved, under regulation 38, a method or factors to be used to determine the gross value of the interest; and
  - (b) evidence is before the court in the relevant proceeding of the contents of a statement issued by the trustee of the plan in which the interest is held, being a statement that states the value of the interest determined in accordance with the method set out in Schedule 2;the gross value of the interest at the relevant date is the value of the interest stated in the statement.

- (4) If no evidence is before the court in the relevant proceeding of the contents of a statement mentioned in paragraph (2) (b) or (3) (b), the gross value at the relevant date of the interest is to be determined using:
- (a) if, under regulation 38, the Minister has approved a method or factors to be used to determine the gross value of the interest — the approved method or factors; or
  - (b) in any other case — the method set out in Schedule 2.

**[39] Subregulation 30 (1)**

*omit*

For the purpose of determining the value of a defined benefit interest in accordance with the method of valuation set out in Schedule 2,

*insert*

For the purpose of determining the gross value of a defined benefit interest in accordance with the method set out in Schedule 2,

**[40] Subregulation 31 (2)**

*substitute*

- (2) Subject to subregulation (2B), if:
- (a) a member information statement stating the value of the interest at the relevant date has been provided to the member spouse; and
  - (b) evidence of the contents of the statement is before the court in the relevant proceeding;
- the gross value at the relevant date of the interest is the value of the interest stated in the statement.
- (2A) If:
- (a) a statement has been issued by the trustee of the plan in which the interest is held, being a statement that states the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the relevant date if the member

spouse had voluntarily ceased to be a member of the plan on that date; and

- (b) evidence of the contents of the statement is before the court in the relevant proceeding;

the gross value at the relevant date of the interest is the value of the interest stated in the statement.

(2B) If:

- (a) evidence of the contents of a member information statement mentioned in subregulation (2) and a statement of the kind mentioned in subregulation (2A) is before the court in the relevant proceeding; and

- (b) the value of the interest stated in each statement is not the same;

the gross value at the relevant date of the interest is the value of the interest stated in the statement mentioned in subregulation (2A).

**[41] Subregulation 31 (3)**

*omit*

subregulation (2)

*insert*

subregulation (2) or (2A)

**[42] Paragraph 31 (4) (a)**

*omit*

one member information statement only is before the court in evidence

*insert*

evidence of the contents of one member information statement only is before the court

**[43] Paragraph 31 (4) (b)***omit*

2 member information statements are before the court in evidence

*insert*

evidence of the contents of 2 member information statements is before the court

**[44] Paragraph 31 (4) (c)***omit*

one member information statement only is before the court in evidence

*insert*

evidence of the contents of one member information statement only is before the court

**[45] After subregulation 31 (4A)***insert*

- (4B) For this regulation, a reference to the value of the interest stated in a statement:
- (a) is a reference to the value stated in the statement, however that value is described (for example, the member's account balance, share in the plan, withdrawal benefit); and
  - (b) if 2 or more values are stated in the statement, is taken to be a reference to the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest if the member spouse had voluntarily ceased to be a member of the plan at the date at which the value is stated.



---

**[46] Regulation 32**

*substitute*

**32 Method for determining gross value — partially vested accumulation interest**

- (1) If the whole of the superannuation interest is a partially vested accumulation interest, the gross value at the relevant date of the interest is to be determined in accordance with this regulation.
- (2) If:
- (a) under regulation 38, the Minister has approved a method or factors to be used to determine the gross value of the interest; and
  - (b) evidence is before the court in the relevant proceeding of the contents of a statement issued by the trustee of the plan in which the interest is held, being a statement that states the gross value of the interest determined in accordance with the approved method or factors;
- the gross value of the interest at the relevant date is the value of the interest stated in the statement.
- (3) If:
- (a) the Minister has not approved, under regulation 38, a method or factors to be used to determine the gross value of the interest; and
  - (b) evidence is before the court in the relevant proceeding of the contents of a statement issued by the trustee of the plan in which the interest is held, being a statement that states the value of the interest determined in accordance with the method set out in Schedule 3;
- the gross value of the interest at the relevant date is the value of the interest stated in the statement.

- (4) If no evidence is before the court in the relevant proceeding of the contents of a statement mentioned in paragraph (2) (b) or (3) (b), the gross value at the relevant date of the interest is to be determined using:
- (a) if, under regulation 38, the Minister has approved a method or factors to be used to determine the gross value of the interest — the approved method or factors; or
  - (b) in any other case — the method set out in Schedule 3.

**[47] Subregulation 37 (2)**

*substitute*

- (2) For the purpose of determining the value at the relevant date of the other amount under paragraph (1) (b), if:
- (a) the other amount is in respect of a superannuation interest; and
  - (b) this Division provides a method for determining an amount in relation to that kind of interest;
- the value at the relevant date of the other amount is to be determined in accordance with that method.

**[48] Regulation 38, heading**

*substitute*

**38 Approval of methods and factors for determining gross value of particular superannuation interests**

**[49] Paragraphs 38 (2) (a) and (b)**

*omit*

the valuation of a superannuation interest

*insert*

the gross value of a superannuation interest, or a component of a superannuation interest,

---

**[50] Paragraph 38 (2) (c)**

*substitute*

- (c) the gross value, in particular circumstances, of a superannuation interest or a component of a superannuation interest, or a superannuation interest or a component of a superannuation interest in a particular category of superannuation interests, in a particular eligible superannuation plan;

**[51] Paragraph 38 (2) (d)**

*omit*

valuation,

*insert*

gross value,

**[52] Subregulation 38 (3), note**

*omit*

of valuation

**[53] Regulation 39**

*omit*

the value of

*insert*

an amount in relation to

**[54] Regulation 40, heading**

*substitute*

**40 Method for determining amount in relation to a superannuation interest — general**

**[55] Subregulation 40 (1)**

*omit*

the value of

*insert*

an amount in relation to

**[56] Subregulation 40 (1), after Step 2**

*omit*

The resulting amount is the **value of the superannuation interest** at the relevant date.

*insert*

The resulting amount is the **amount in relation to the superannuation interest** at the relevant date.

**[57] Paragraph 42 (2) (b)**

*omit*

of valuation

**[58] Paragraph 43 (2) (a)**

*omit*

of valuation

**[59] Subregulation 42 (3)**

*omit*

of valuation

---

**[60] Regulation 43A, heading**

*substitute*

**43A Approval of methods and factors for determining gross value of superannuation interest being paid as a life pension**

**[61] Subregulation 43A (2), note**

*omit*

of valuation

**[62] After Division 6.1**

*insert*

**Division 6.1A Adjustment of base amount**

**45A Adjustment of base amount**

- (1) For the purpose of calculating:
- (a) the amount (if any) that the non-member spouse is entitled to be paid in respect of a splittable payment that becomes payable in respect of a superannuation interest in the growth phase that is subject to a payment split; or
  - (b) the value of the non-member spouse's entitlement under a superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest in the growth phase;

the base amount allocated to the non-member spouse in relation to the interest must be adjusted by the trustee of the eligible superannuation plan in which the interest is held for each adjustment period applicable to the interest under this Division.

- 
- (2) After each applicable adjustment period, the trustee must, if necessary, adjust the base amount in accordance with the rate of interest that applied to the superannuation interest in that adjustment period under regulation 45D.

*Note* Depending on the rate of interest that applied to the superannuation interest in an adjustment period, the base amount may be adjusted by a positive amount or a negative amount or, if the rate was nil, not adjusted.

- (3) For this regulation, a superannuation interest is in the growth phase if:
- (a) in the case of an interest that is identified in a superannuation agreement or flag lifting agreement — the interest was in the growth phase at the date when the agreement was served on the trustee under section 90MI of the Act; and
  - (b) in the case of an interest in relation to which a splitting order applies — the interest was in the growth phase at the date of the order.

**45B Applicable adjustment periods — superannuation interests other than those to which regulation 45C applies**

- (1) If a superannuation interest is not an interest to which regulation 45C applies, the applicable adjustment periods for the interest are:
- (a) if a splittable payment becomes payable, or a terminating action occurs, in respect of the interest before the end of the first year — the period beginning at the operative time and ending at the end of the day before the payment becomes payable or the terminating action occurs; and
  - (b) in any other case, the following periods:
    - (i) the period beginning at the operative time and ending at the end of the first year;
    - (ii) after the first year, each whole year (if any) ending before a splittable payment becomes payable, or a terminating action occurs, in respect of the interest;
    - (iii) in the year in which a splittable payment becomes payable, or a terminating action occurs, in respect of the interest — the period beginning at the beginning

of that year and ending at the end of the day before the payment becomes payable or the terminating action occurs.

(2) In this regulation:

*first year* means the year in which the operative time in relation to the relevant payment split occurs.

*relevant condition of release* has the same meaning as in Division 2.2.

*terminating action*, for a superannuation interest, means any of the following actions, in respect of the non-member spouse's entitlement under a superannuation agreement, flag lifting agreement or splitting order, by the trustee of the plan in which the interest is held:

- (a) the creation, under the governing rules of the plan, of a new interest in the plan for the non-member spouse;
- (b) the transfer or rollover, under the governing rules of the plan, to another superannuation fund or an RSA of an amount to be held for the benefit of the non-member spouse;
- (c) if the non-member spouse has satisfied a relevant condition of release — the payment of an amount to the non-member spouse.

*year*, for a superannuation interest, means:

- (a) if the interest is in a regulated superannuation fund that has a year of income within the meaning of subsection 10 (1) of the SIS Act — a year of income; and
- (b) in any other case — a financial year.

#### **45C Applicable adjustment periods — whole of superannuation interest is accumulation interest**

- (1) If the whole of a superannuation interest is an accumulation interest in a regulated superannuation fund (other than a self managed superannuation fund), an approved deposit fund or an RSA, the applicable adjustment periods for the interest are:
  - (a) if a splittable payment becomes payable, or a terminating action occurs, in respect of the interest before the end of the first allotment period — the period beginning at the

---

operative time and ending at the end of the period for which the plan would allot net earnings to the member spouse if he or she voluntarily ceased to be a member of the plan on the day when the splittable payment becomes payable or the terminating action occurs; and

- (b) in any other case, the following periods:
- (i) the period beginning at the operative time and ending at the end of the first allotment period;
  - (ii) after the first allotment period, each whole allotment period (if any) ending before a splittable payment becomes payable, or a terminating action occurs, in respect of the interest;
  - (iii) in the allotment period in which a splittable payment becomes payable, or a terminating action occurs, in respect of the interest — the period beginning at the beginning of that allotment period and ending at the end of the period for which the plan would allot net earnings to the member spouse if he or she voluntarily ceased to be a member of the plan on the day when the splittable payment becomes payable or the terminating action occurs.

(2) In this regulation:

***allotment period***, for a superannuation interest, means the period used by the plan in which the interest is held to allot net earnings of the plan to the member who has the interest.

***first allotment period***, for a superannuation interest, means the allotment period in which the operative time in relation to the relevant payment split occurs.

***relevant condition of release*** has the same meaning as in Division 2.2.

***terminating action***, for a superannuation interest, means any of the following actions, in respect of the non-member spouse's entitlement under a superannuation agreement, flag lifting agreement or splitting order, by the trustee of the plan in which the interest is held:

- (a) the creation, under the payment split provisions of the SIS Regulations, of a new interest in the plan for the non-member spouse;



- 
- (b) the opening of a new RSA for the non-member spouse under the payment split provisions of the RSA Regulations;
  - (c) the transfer or rollover, under the payment split provisions of the SIS Regulations or the RSA Regulations, to another superannuation fund or an RSA of an amount to be held for the benefit of the non-member spouse;
  - (d) if the non-member spouse has satisfied a relevant condition of release — the payment, under the payment split provisions of the SIS Regulations or the RSA Regulations, of an amount to the non-member spouse.

#### **45D Interest rates for adjustment of base amount**

- (1) The rate of interest that applies to a superannuation interest in an adjustment period is the interest rate that applies to the interest for the adjustment period under this regulation.
- (2) If the whole of the superannuation interest is an accumulation interest (other than an interest in a self managed superannuation fund), the interest rate for the adjustment period is:
  - (a) for an interest in a regulated superannuation fund, an approved deposit fund or an RSA:
    - (i) the rate of any allotment (being the allotment of a positive amount, a nil amount or a negative amount) to the member spouse of net earnings of the eligible superannuation plan for the adjustment period; or
    - (ii) if there has been no such allotment to the member spouse for the adjustment period, the rate at which net earnings of the plan would be allotted to the member spouse if he or she voluntarily ceased to be a member of the plan on the day when the relevant splittable payment becomes payable or the terminating action, within the meaning given by subregulation 45C (2), occurs; and

- 
- (b) if the interest is in an exempt public sector superannuation scheme or a superannuation fund that is not a regulated superannuation fund:
- (i) the rate of any allocation (being the allocation of a positive amount, a nil amount or a negative amount) to the member spouse of investment earnings (however described) of the eligible superannuation plan for the adjustment period; or
  - (ii) if there has been no such allocation to the member spouse for the adjustment period, the rate at which those investment earnings would be allocated to the member spouse if he or she voluntarily ceased to be a member of the plan on the day before the relevant splittable payment becomes payable.
- (3) If:
- (a) the whole, or any component, of the superannuation interest is a defined benefit interest, or the superannuation interest is in a self managed superannuation fund; and
  - (b) the adjustment period is exactly 12 months;
- the interest rate for the adjustment period is the rate calculated by the Australian Government Actuary, and published in the *Gazette*, being a rate calculated by reference to a rate that is 2.5 percentage points above the percentage change in the original estimate of full-time adult ordinary time earnings for all persons in Australia, as published by the Australian Bureau of Statistics for the quarter ending immediately before the rate is calculated.
- (4) If:
- (a) the whole, or any component, of the superannuation interest is a defined benefit interest, or the superannuation interest is in a self managed superannuation fund; and
  - (b) the adjustment period is less than 12 months;
- the interest rate for the adjustment period is the rate calculated in accordance with a method determined by the Australian Government Actuary, and published in the *Gazette*, being a method that provides for calculation of a rate by reference to a rate that is 2.5 percentage points above the percentage change in the original estimate of full-time adult ordinary time

earnings for all persons in Australia, as published by the Australian Bureau of Statistics for the quarter ending immediately before the notice is published.

**[63] Regulations 47 and 48**

*omit*

**[64] Paragraph 49 (1) (a)**

*omit*

the splittable payment

*insert*

the first splittable payment

**[65] Paragraph 50 (1) (a)**

*omit*

the splittable payment

*insert*

the first splittable payment

**[66] Subregulation 50 (3), formula**

*substitute*

$$\frac{(ABA - X) \times SP}{A - X}$$

**[67] Subregulation 50 (3), definition of *V***

*substitute*

*A* is the amount in relation to the superannuation interest at the date when the first splittable payment became payable in respect of the superannuation interest, determined in accordance with the relevant method set out in Division 5.2, as if references in that Division to ‘the relevant date’ were

references to ‘the date when the first splittable payment became payable in respect of the superannuation interest’.

**[68] Subregulation 51 (7), formula**

*substitute*

$$A - X - \left( \frac{Y \times P_{y+m}}{\text{Comm}} \right)$$

**[69] Subregulation 51 (7), definition of V**

*substitute*

*A* has the meaning given by subregulation 50 (3).

**[70] Subregulation 53 (4), formula**

*substitute*

$$\frac{(\text{ABA} \times (1 - \text{Prop.})) \times \text{SP}}{A - \left( \frac{Y \times P_{y+m}}{\text{Comm}} \right)}$$

**[71] Subregulation 53 (4), definition of V**

*substitute*

*A* has the meaning given by subregulation 50 (3).

**[72] Regulation 54, heading**

*substitute*

**54 Amount to be paid to non-member spouse — no benefit payable only as lump sum or first splittable payment not lump sum**

---

**[73] Subregulation 54 (1)**

*substitute*

- (1) This regulation applies in relation to the superannuation interest if:
- (a) benefits in respect of the interest are not payable as an allocated pension, and no benefit is payable to the member spouse or other person as a lump sum (including a lump sum that the member spouse or other person may choose to take, by way of a commutation of a pension payable to him or her, or otherwise, in respect of the whole, or a part, of the benefits in respect of the interest); or
  - (b) the first splittable payment that the member spouse or other person is entitled to receive is not a lump sum, but a lump sum is payable in respect of the interest at a later time.

**[74] Subregulation 54 (2), formula**

*substitute*

$$\frac{ABA \times SP}{A}$$

**[75] Subregulation 54 (2), definition of *V***

*substitute*

*A* is the amount in relation to the superannuation interest at the date when the first splittable payment becomes payable in respect of the superannuation interest, determined in accordance with the relevant method set out in Division 5.2, as if references in that Division to ‘the relevant date’ were references to ‘the date when the first splittable payment becomes payable in respect of the superannuation interest’.

**[76] Subregulation 54A (5), formula***substitute*

$$\frac{(ABA - X) \times SP}{A - X}$$

**[77] Subregulation 54A (5), definition of V***substitute**A* has the meaning given by subregulation 50 (3).**[78] Regulation 55***omit*

subregulation 17 (4),

*insert*

subregulation 17 (2),

**[79] Subregulation 57 (3), formula***substitute*

$$\frac{(BA - X) \times SP}{A - X}$$

**[80] Subregulation 57 (3), definition of V***substitute*

*A* is the amount in relation to the superannuation interest at the date when the first splittable payment became payable in respect of the superannuation interest after the operative time, determined in accordance with the relevant method set out in Division 5.2, as if references in that Division to ‘the relevant date’ were references to ‘the date when the first splittable payment became payable in respect of the superannuation interest after the operative time’.

**[81] Subregulation 58 (7), formula***substitute*

$$A - X - \left( \frac{Y \times P_{y+m}}{\text{Comm}} \right)$$

**[82] Subregulation 58 (7), definition of V***substitute**A* has the meaning given by subregulation 57 (3).**[83] Subregulation 58A (5), formula***substitute*

$$\frac{(BA - X) \times SP}{A - X}$$

**[84] Subregulation 58A (5), definition of ABA***substitute**BA* is the base amount allocated to the non-member spouse in relation to the superannuation interest.**[85] Subregulation 58A (5), definition of V***substitute**A* has the meaning given by subregulation 50 (3).**[86] Subregulation 58D (3), formula***substitute*

$$\frac{(BA - X) \times SP}{A - X}$$

**[87] Subregulation 58D (3), definition of V**

*substitute*

A has the meaning given by subregulation 57 (3).

**[88] Subregulation 63 (2)**

*omit*

For subsection 90MZB (3) of the Act,

*insert*

For subsection 90MZB (3) of the Act and subject to subregulation (6),

**[89] Paragraphs 63 (2) (d) and (e)**

*substitute*

- (d) if the interest was in the payment phase at the appropriate date — the payment phase information in relation to the interest mentioned in subregulation (3);
- (e) if the interest was in the growth phase at the appropriate date:
  - (i) in the case of an accumulation interest other than a partially vested accumulation interest — the growth phase information in relation to the interest mentioned in subregulation (4); and
  - (ii) in the case of a partially vested accumulation interest — the growth phase information in relation to the interest mentioned in subregulation (4A);
- (ea) if the application for information specifically requests the trustee to provide information about the withdrawal benefit in relation to the member — the withdrawal benefit in relation to the member at the date when the information is provided;

*Note* If an application for information specifically requests the information mentioned in paragraph (ea) to be provided, the trustee is required to provide only the information mentioned in that paragraph and paragraphs (4) (d), (e) and (f), or paragraphs (4A) (j), (k) and (l), as the case requires, to the applicant, and is not required to provide any other information to the applicant under this regulation — see paragraph (6) (a).



---

**[90] Paragraph 63 (3) (a)**

*substitute*

- (a) if the member is receiving ongoing pension payments in respect of an allocated pension — the withdrawal benefit in relation to the member at the appropriate date; and

**[91] Paragraph 63 (3) (b)**

*omit*

in any other case:

*insert*

if the member is receiving ongoing pension payments in respect of a pension other than an allocated pension:

**[92] Subparagraph 63 (3) (b) (v)**

*omit*

member.

*insert*

member; and

**[93] Paragraph 63 (3) (b), at the foot**

*insert*

*Note for paragraphs (a) and (b)* The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (b) (i) unless a record of it is in the trustee's possession, power or control — see paragraph (6) (b).

**[94] After paragraph 63 (3) (b)**

*insert*

- (c) if a lump sum is payable to the member in respect of the interest at the date when the information is provided or at any later date, and the amount of the lump sum is known — the amount of the lump sum; and

- 
- (d) if a lump sum (a *future lump sum*) is payable to the member in respect of the interest at a date after the date when the information is provided, and the amount of the lump sum is not known:
- (i) the amount of the lump sum that would have been paid at the date when the information is provided if a lump sum were payable at that date (the *nominal lump sum*); and
  - (ii) the method that is to be used to index the nominal lump sum to determine the amount of the future lump sum; and
- (e) if a lump sum payment that would have been an eligible termination payment under Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* had been made in respect of the interest at the date when the information is provided:
- (i) the amount of the payment; and
  - (ii) the value that the components of the payment mentioned in paragraphs 27AA (1) (a), (aa), (b), (c), (cb), (d) and (e) of that Act would have had.

**[95] Subregulation 63 (4)**

*omit everything before paragraph (a), insert*

- (4) For subparagraph (2) (e) (i), the growth phase information in relation to the superannuation interest (being an accumulation interest other than a partially vested accumulation interest) is as follows:
- (aa) the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the appropriate date if the member spouse had voluntarily ceased to be a member of the plan at that date;

*Note* The trustee is not required to provide this information unless a record of it is in the trustee's possession, power or control — see paragraph (6) (c).

---

**[96] Subparagraph 63 (4) (a) (iii)**

*substitute*

- (iii) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the earlier statement and ending at the end of the valuation date stated in the next statement;

**[97] Paragraph 63 (4) (b)**

*omit*

the first statement:

*insert*

the first member information statement provided to the member (the *first statement*):

**[98] Subparagraph 63 (4) (b) (iii)**

*substitute*

- (iii) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the date when the interest was acquired and ending at the end of the valuation date stated in the first statement;

**[99] Subparagraphs 63 (4) (c) (ii) and (iii)**

*substitute*

- (ii) the value of the interest at the date when the information is provided; and
- (iii) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the most recent statement and ending at the end of the day when the information is provided;

**[100] After paragraph 63 (4) (c)**

*insert*

- (ca) if no member information statement in relation to the interest has been provided to the member:
- (i) the value of the interest at the date when the interest was acquired; and
  - (ii) the value of the interest at the date when the information is provided; and
  - (iii) the amount, and the date, of any rollover or transfer by the member, or any partial payment to the member, in the period beginning on the day after the date when the interest was acquired and ending at the end of the day when the information is provided;

*Note for paragraphs (a), (b), (c) and (ca)* The trustee is required to provide the information mentioned in these paragraphs in certain circumstances only — see paragraph (6) (d).

**[101] Subparagraphs 63 (4) (d) (i) and (ii)**

*substitute*

- (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if he or she were to resign from his or her employment on the date when the information is provided; and
- (ii) the amount (if any) of the member's unrestricted non-preserved benefits;

**[102] Paragraph 63 (4) (e)**

*omit*

the date when the application for information is received by the trustee,

*insert*

the date when the information is provided,

---

**[103] Subparagraph 63 (4) (f) (i)**

*omit*

the application for information is received by the trustee;

*insert*

the information is provided;

**[104] Paragraph 63 (4) (g)**

*omit*

effect;

*insert*

effect.

**[105] Paragraph 63 (4) (h)**

*omit*

**[106] After subregulation 63 (4)**

*insert*

(4A) For subparagraph (2) (e) (ii), the growth phase information in relation to the superannuation interest (being a partially vested accumulation interest) is as follows:

- (a) the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the appropriate date if the member spouse had voluntarily ceased to be a member of the plan at that date;

*Note* The trustee is not required to provide this information unless a record of it is in the trustee's possession, power or control — see paragraph (6) (c).

- (b) if 2 or more member information statements in relation to the interest have been provided to the member, and the appropriate date is between the valuation date stated in one statement (the *earlier statement*) and the valuation date stated in the next statement (the *next statement*):

- (i) the value of the actual vested benefit in respect of the interest, as stated in the earlier statement; and

- (ii) if stated in the earlier statement, the total member credit at the valuation date stated in that statement; and
  - (iii) the value of the actual vested benefit in respect of the interest, as stated in the next statement; and
  - (iv) if stated in the next statement, the total member credit at the valuation date stated in that statement; and
  - (v) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the earlier statement and ending at the end of the valuation date stated in the next statement;
- (c) if at least one member information statement in relation to the interest has been provided to the member, and the appropriate date is before the valuation date stated in the first member information statement provided to the member (the *first statement*):
- (i) the value of the actual vested benefit in respect of the interest, as stated in the first statement; and
  - (ii) if stated in the first statement, the total member credit at the valuation date stated in that statement; and
  - (iii) the value of the actual vested benefit in respect of the interest at the date when the interest was acquired; and
  - (iv) the total member credit at the date when the interest was acquired; and
  - (v) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the date when the interest was acquired and ending at the end of the valuation date stated in the first statement;

- 
- (d) if at least one member information statement in relation to the interest has been provided to the member, and the appropriate date is after the valuation date stated in the most recent statement:
- (i) the value of the actual vested benefit in respect of the interest, as stated in the most recent statement; and
  - (ii) if stated in the most recent statement, the total member credit at the valuation date stated in that statement; and
  - (iii) the value of the actual vested benefit in respect of the interest at the date when the information is provided; and
  - (iv) the total member credit at the date when the information is provided; and
  - (v) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the most recent statement and ending at the end of the day when the information is provided;
- (e) if no member information statement in relation to the interest has been provided to the member:
- (i) the value of the actual vested benefit in respect of the interest at the date when the interest was acquired; and
  - (ii) the total member credit at the date when the interest was acquired; and
  - (iii) the value of the actual vested benefit in respect of the interest at the date when the information is provided; and
  - (iv) the total member credit at the date when the information is provided; and
  - (v) the amount, and the date, of any rollover or transfer by the member, or any partial payment to the member, in the period beginning on the day after the date when the interest was acquired and ending at the end of the day when the information is provided;

*Note for paragraphs (b), (c), (d) and (e)* The trustee is required to provide the information mentioned in these paragraphs in certain circumstances only — see paragraph (6) (d).

- (f) the vesting term that applies to the interest;
- (g) the date when the vesting term commenced;
- (h) a statement indicating whether the Minister has approved, under regulation 38, a method or factors for determining the gross value of the interest and giving details of any method or factors so approved;
- (i) if a member information statement in relation to the interest that has been provided to the member does not include the total member credit at the valuation date stated in the statement — that information;
- (j) if the interest is in a regulated superannuation fund or an RSA:
  - (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if he or she were to resign from his or her employment on the date when the information is provided; and
  - (ii) the amount (if any) of the member's unrestricted non-preserved benefits;
- (k) if the interest is in an approved deposit fund — the amount, at the date when the information is provided, of the member's unrestricted non-preserved benefits;
- (l) if:
  - (i) a payment that would have been an eligible termination payment under Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* had been made in respect of the interest at the date when the information is provided; and
  - (ii) the amount of the payment had been the amount payable to the member if he or she had voluntarily ceased to be a member of the plan —  
the value that the components of the payment mentioned in paragraphs 27AA (1) (a), (aa), (b), (c), (cb), (d) and (e) of that Act would have had;



- 
- (m) if the trustee has given information under Division 2.5 of the SIS Regulations to each member of the plan that the plan is to be reconstructed or terminated — a statement to this effect.

**[107] Subregulation 63 (6)**

*substitute*

- (6) The trustee is not required to provide information mentioned in this regulation to an applicant in any of the following circumstances:
- (a) if the application for information specifically requests the trustee to provide the information mentioned in paragraph (2) (ea) to the applicant, the trustee is required to provide only the information mentioned in that paragraph and paragraphs (4) (d), (e) and (f), or paragraphs (4A) (j), (k) and (l), as the case requires, to the applicant, and is not required to provide any other information mentioned in this regulation to the applicant;
  - (b) the trustee is not required to provide the information mentioned in paragraph (3) (a) or subparagraph (3) (b) (i) to the applicant unless a record of that information is in the trustee's possession, power or control;
  - (c) the trustee is not required to provide the information mentioned in paragraph (4) (aa) or paragraph (4A) (a), as the case requires, to the applicant unless a record of that information is in the trustee's possession, power or control;
  - (d) the trustee is not required to provide the information mentioned in paragraph (4) (a), (b), (c) or (ca) or paragraph (4A) (b), (c), (d) or (e), as the case requires, to the applicant unless:
    - (i) the application for information specifically requests the trustee to provide this information; and
    - (ii) a record of the information is in the trustee's possession, power or control; and
    - (iii) a record of the information mentioned in paragraph (4) (aa) or paragraph (4A) (a), as the case requires, is not in the trustee's possession, power or control.

- (7) For this regulation, a reference to the value of the interest stated in a statement:
- (a) is a reference to the value stated in the statement, however that value is described (for example, the member's account balance, share in the plan, withdrawal benefit); and
  - (b) if 2 or more values are stated in the statement, is taken to be a reference to the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest if the member spouse had voluntarily ceased to be a member of the plan at the date at which the value is stated.
- (8) In this regulation:
- total member credit***, in relation to a superannuation interest of a member and a date, means the total amount that would be standing to the credit of the member in respect of the interest if the benefit in respect of the interest were fully vested at that date.
- valuation date***, in relation to a superannuation interest to which a member information statement applies, means the date as at which the value of the interest, or the total member credit, is stated in the statement.

**[108] Subregulation 64 (2)**

*omit*

For subsection 90MZB (3) of the Act,

*insert*

For subsection 90MZB (3) of the Act and subject to subregulation (6),

**[109] Paragraph 64 (2) (d)**

*substitute*

- (d) if the interest was in the payment phase at the appropriate date — the payment phase information in relation to the interest mentioned in subregulation (3);

---

**[110] Paragraph 64 (2) (e)**

*omit*

subject to subregulation (6),

**[111] After paragraph 64 (2) (e)**

*insert*

- (ea) if the application for information specifically requests the trustee to provide information about the withdrawal benefit in relation to the member — the withdrawal benefit in relation to the member at the date when the information is provided;

*Note* If an application for information specifically requests the information mentioned in paragraph (ea) to be provided, the trustee is required to provide only the information mentioned in that paragraph and paragraphs (4) (k), (l) and (m) to the applicant, and is not required to provide any other information to the applicant under this regulation — see paragraph (6) (a).

**[112] Paragraph 64 (3) (a)**

*substitute*

- (a) if the member is receiving ongoing pension payments in respect of an allocated pension — the withdrawal benefit in relation to the member at the appropriate date; and

**[113] Paragraph 64 (3) (b)**

*omit*

in any other case:

*insert*

if the member is receiving ongoing pension payments in respect of a pension other than an allocated pension:

**[114] Subparagraph 64 (3) (b) (v)**

*omit*

member.

*insert*

member; and

**[115] Paragraph 64 (3) (b), at the foot**

*insert*

*Note for paragraphs (a) and (b)* The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (b) (i) unless a record of it is in the trustee's possession, power or control — see paragraph (6) (b).

**[116] After paragraph 64 (3) (b)**

*insert*

- (c) if a lump sum is payable to the member in respect of the interest at the date when the information is provided or at any later date, and the amount of the lump sum is known — the amount of the lump sum; and
- (d) if a lump sum (a *future lump sum*) is payable to the member in respect of the interest at a date after the date when the information is provided, and the amount of the lump sum is not known:
  - (i) the amount of the lump sum that would have been paid at the date when the information is provided if a lump sum were payable at that date (the *nominal lump sum*); and
  - (ii) the method that is to be used to index the nominal lump sum to determine the amount of the future lump sum; and
- (e) if a lump sum payment that would have been an eligible termination payment under Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* had been made in respect of the interest at the date when the information is provided:
  - (i) the amount of the payment; and

- 
- (ii) the value that the components of the payment mentioned in paragraphs 27AA (1) (a), (aa), (b), (c), (cb), (d) and (e) of that Act would have had.

**[117] Subparagraphs 64 (4) (k) (i) and (ii)**

*substitute*

- (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if he or she were to resign from his or her employment on the date when the information is provided; and
- (ii) the amount (if any) of the member's unrestricted non-preserved benefits;

**[118] Paragraph 64 (4) (l)**

*omit*

the date when the application for information is received by the trustee,

*insert*

the date when the information is provided,

**[119] Subparagraph 64 (4) (m) (i)**

*omit*

the application for information is received by the trustee;

*insert*

the information is provided;

**[120] Subparagraph 64 (4) (n) (i)**

*omit*

value

*insert*

gross value

**[121] Paragraph 64 (4) (o)**

*omit*

effect.

*insert*

effect; and

**[122] After paragraph 64 (4) (o)**

*insert*

- (p) the gross value of the interest at the appropriate date, determined in accordance with Schedule 2 of these Regulations or in accordance with a method or factors approved by the Minister under regulation 38 of these Regulations;

*Note* The trustee is not required to provide the information mentioned in any of paragraphs (a) to (i) or (n), paragraph (j) or paragraph (p) to the applicant in certain circumstances — see paragraphs (6) (c), (d) and (e).

**[123] Subregulation 64 (6)**

*substitute*

- (6) The trustee is not required to provide information mentioned in this regulation to an applicant in any of the following circumstances:
- (a) if the application for information specifically requests the trustee to provide the information mentioned in paragraph (2) (ea) to the applicant, the trustee is required to provide only the information mentioned in that paragraph and paragraphs (4) (k), (l) and (m) to the applicant, and is not required to provide any other information mentioned in this regulation to the applicant;
  - (b) the trustee is not required to provide the information mentioned in paragraph (3) (a) or subparagraph (3) (b) (i) to the applicant unless a record of that information is in the trustee's possession, power or control;
  - (c) if the application for information specifically requests the trustee to provide the information mentioned in paragraph (4) (p) to the applicant and the trustee chooses

- to do so, the trustee is not required to provide the information mentioned in paragraphs (4) (a) to (i) and (n) to the applicant;
- (d) the trustee is not required to provide the information mentioned in paragraph (4) (j) to the applicant unless a record of that information is in the trustee's possession, power or control;
- (e) if the application for information specifically requests the trustee to provide the information mentioned in paragraph (4) (p) to the applicant, the trustee is not required to provide this information to the applicant but may choose to do so.
- (7) If, under regulation 38, the Minister has approved a method or factors to be used to determine the gross value of a defined benefit interest, or a component of a superannuation interest that is a defined benefit interest, the Minister may, by written determination, provide:
- (a) that the trustee is not required to provide the information about the interest, or the component of the interest, mentioned in one or more paragraphs of subregulation 64 (4); and
- (b) that the trustee must provide other information, as specified in the determination, about the interest or the component of the interest.
- (8) A determination by the Minister under subregulation (7) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**[124] Subregulation 66 (2)**

*omit*

For subsection 90MZB (3) of the Act,

*insert*

For subsection 90MZB (3) of the Act and subject to subregulation (6),

**[125] Paragraph 66 (2) (d)***omit*

subject to subregulation (6),

**[126] Paragraph 66 (2) (e)***omit*

subject to subregulation (6),

**[127] After paragraph 66 (2) (e)***insert*

- (ea) if the application for information specifically requests the trustee to provide information about the withdrawal benefit in relation to the member — the withdrawal benefit in relation to the member at the date when the information is provided;

*Note* If an application for information specifically requests the information mentioned in paragraph (ea) to be provided, the trustee is required to provide only the information mentioned in that paragraph and paragraphs (4) (d) and (e) to the applicant, and is not required to provide any other information to the applicant under this regulation — see paragraph (6) (a).

**[128] Subregulation 66 (3), at the foot***insert*

*Note* The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (b) (i) unless a record of it is in the trustee's possession, power or control — see paragraph (6) (b).

**[129] Paragraph 66 (4) (c), at the foot***insert*

*Note* The trustee is not required to provide the information mentioned in paragraph (c) unless a record of it is in the trustee's possession, power or control — see paragraph (6) (b).



---

**[130] Subparagraphs 66 (4) (d) (i) and (ii)**

*substitute*

- (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if he or she were to resign from his or her employment on the date when the information is provided; and
- (ii) the amount (if any) of the member's unrestricted non-preserved benefits;

**[131] Subparagraph 66 (4) (e) (i)**

*omit*

the application for information is received by the trustee;

*insert*

the information is provided;

**[132] Subregulation 66 (6)**

*substitute*

- (6) The trustee is not required to provide information mentioned in this regulation to an applicant in any of the following circumstances:
  - (a) if the application for information specifically requests the trustee to provide the information mentioned in paragraph (2) (ea) to the applicant, the trustee is required to provide only the information mentioned in that paragraph and paragraphs (4) (d) and (e) to the applicant, and is not required to provide any other information mentioned in this regulation to the applicant;
  - (b) the trustee is not required to provide the information mentioned in paragraph (3) (a), subparagraph (3) (b) (i) or paragraph (4) (c) to the applicant unless a record of that information is in the trustee's possession, power or control.

**[133] Subregulation 67 (2)**

*omit*

For subsection 90MZB (3) of the Act,

*insert*

For subsection 90MZB (3) of the Act and subject to subregulation (5),

**[134] Paragraph 67 (2) (d)**

*omit*

subject to subregulation (5),

**[135] After paragraph 67 (2) (e)**

*insert*

- (ea) if the application for information specifically requests the trustee to provide information about the withdrawal benefit in relation to the member — the withdrawal benefit in relation to the member at the date when the information is provided;

*Note* If an application for information specifically requests the information mentioned in paragraph (ea) to be provided, the trustee is not required to provide any other information to the applicant under this regulation — see paragraph (5) (a).

**[136] Subregulation 67 (3), at the foot**

*insert*

*Note* The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (b) (i) unless a record of it is in the trustee's possession, power or control — see paragraph (5) (b).

---

**[137] Subregulation 67 (5)**

*substitute*

- (5) The trustee is not required to provide information mentioned in this regulation to an applicant in any of the following circumstances:
- (a) if the application for information specifically requests the trustee to provide the information mentioned in paragraph (2) (ea) to the applicant, the trustee is not required to provide any other information mentioned in this regulation to the applicant;
  - (b) the trustee is not required to provide the information mentioned in paragraph (3) (a) or subparagraph (3) (b) (i) to the applicant unless a record of that information is in the trustee's possession, power or control.

**[138] Subparagraph 70 (2) (b) (ii)**

*after*

basis;

*insert*

and

**[139] After subparagraph 70 (2) (b) (ii)**

*insert*

- (iii) the percentage (if any) specified in the agreement or order that is to apply to all splittable payments in respect of the interest;

**[140] Paragraphs 70 (2) (e) and (f)**

*substitute*

- (e) details of any fee payable by the non-member spouse under regulation 59, and arrangements for the payment of any such fee.

**[141] Subregulation 72 (1)***substitute*

- (1) The non-member spouse in relation to a superannuation interest that is subject to a payment split or payment flag must notify the trustee of the eligible superannuation plan in which the interest is held of the following matters:
  - (a) the non-member spouse's full name;
  - (b) the non-member spouse's postal address and, if this address changes, details of the changed postal address;
  - (c) if the interest is subject to a payment split:
    - (i) the non-member spouse's date of birth; and
    - (ii) whether the non-member spouse is a member of the plan and, if so, the non-member spouse's membership number, if known.

**[142] Subregulation 72 (3)***substitute*

- (3) The non-member spouse must give the notice to the trustee:
  - (a) as soon as practicable after the copy of the relevant superannuation agreement, flag lifting agreement or payment flag is served on the trustee, or the splitting order is made; and
  - (b) if the notice is to give details of a changed postal address for the non-member spouse — as soon as practicable after the change in address occurs.

**[143] Schedule 1, Form 1, heading***substitute***Form 1 Notice to trustee that non-member spouse's entitlement under agreement or order satisfied**

(subregulations 14H (2) and (3))

---

**[144] Schedule 1, Form 6, paragraph (b) first mentioned**

*substitute*

- \*(b) a superannuation interest of [full name of member], born on [date of birth of member], who is a member of the plan.

**[145] Schedule 2, subclause 3 (2), definition of  $f_{y+1}$**

*substitute*

$f_{y+1}$  is the lump sum valuation factor mentioned in clause 4 of this Schedule that would apply if the member spouse's term to retirement in complete years were one year more than the member spouse's term to retirement in complete years at the relevant date.

**[146] Schedule 3, subclause 2 (1), definition of  $A$**

*substitute*

$A$  is the amount that would be the total amount standing to the credit of the member spouse in respect of the interest if the benefit in respect of the interest were fully vested at the relevant date, determined in accordance with clause 3A.

**[147] Schedule 3, subclause 2 (2), definition of  $f_{y+1}$**

*substitute*

$f_{y+1}$  is the vesting factor mentioned in clause 4 of this Schedule that would apply to the relevant vesting period if the member spouse's length of membership in the plan were one year more than the member spouse's length of membership in complete years at the relevant date.

---

**[148] Schedule 3, clauses 3 and 4**

*substitute*

**3 Actual vested benefit**

- (1) For subclause 2 (1), this clause sets out how to determine the value, at the relevant date, of the actual vested benefit (V) in respect of the superannuation interest.
- (2) Subject to subclause (4), if:
  - (a) a member information statement stating the value of the interest at the relevant date has been provided to the member spouse; and
  - (b) evidence of the contents of the statement is before the court in the relevant proceeding;the value at the relevant date of the actual vested benefit in respect of the interest is the value of the interest stated in the statement.
- (3) If:
  - (a) a statement has been issued by the trustee of the plan in which the interest is held, being a statement that states the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the relevant date if the member spouse had voluntarily ceased to be a member of the plan on that date; and
  - (b) evidence of the contents of the statement is before the court in the relevant proceeding;the value at the relevant date of the actual vested benefit in respect of the interest is the value of the interest stated in the statement.
- (4) If:
  - (a) evidence of the contents of a member information statement mentioned in subclause (2) and a statement of the kind mentioned in subclause (3) is before the court in the relevant proceeding; and

- (b) the value of the interest stated in each statement is not the same;

the value at the relevant date of the actual vested benefit in respect of the interest is the value of the interest stated in the statement mentioned in subclause (3).

- (5) If subclause (2) or (3) does not apply, the value, at the relevant date, of the actual vested benefit in respect of the interest is:

$$V1 + \frac{(V2 - V1) \times X}{D}$$

where:

*V1* is the sum of:

- (a) the value of the actual vested benefit in respect of the interest at the first valuation date; and
- (b) the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan) in the period between the first valuation date and the relevant date (excluding both those dates), less the value of any partial payment of benefits to the member made in that period.

*V2* is the sum of:

- (a) the value of the actual vested benefit in respect of the interest at the second valuation date; and
- (b) the value of any partial payment of benefits made to the member in the period beginning on the day after the relevant date and ending at the end of the second valuation date, less the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan), and any interest earned on those benefits, in that period.

*X* is the number of days in the period between the first valuation date and the relevant date (excluding both those dates).

---

*D* is the number of days in the period beginning on the day after the first valuation date and ending at the end of the second valuation date.

- (6) For the purpose of determining the value, at the relevant date, of the actual vested benefit in respect of the member spouse's interest under subclause (5):
- (a) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is after the valuation date stated in that statement:
- (i) the *first valuation date* is the valuation date stated in that statement; and
  - (ii) the *value of the actual vested benefit in respect of the interest at the first valuation date* is the value of the interest stated in that statement; and
  - (iii) the *second valuation date* is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
  - (iv) the *value of the actual vested benefit in respect of the interest at the second valuation date* is the value of the interest at that date; and
- (b) if, in relation to the interest, evidence of the contents of 2 member information statements is before the court in the relevant proceeding, and the relevant date is between the valuation date stated in one of those statements (the *first statement*) and the valuation date stated in the other statement (the *second statement*):
- (i) the *first valuation date* is the valuation date stated in the first statement; and
  - (ii) the *value of the actual vested benefit in respect of the interest at the first valuation date* is the value of the interest stated in the first statement; and
  - (iii) the *second valuation date* is the valuation date stated in the second statement; and
  - (iv) the *value of the actual vested benefit in respect of the interest at the second valuation date* is the value of the interest stated in the second statement; and



- 
- (c) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is before the valuation date stated in that statement:
- (i) the *first valuation date* is the date when the interest was acquired by the member spouse; and
  - (ii) the *value of the actual vested benefit in respect of the interest at the first valuation date* is the value of the interest at that date; and
  - (iii) the *second valuation date* is the valuation date stated in the statement; and
  - (iv) the *value of the actual vested benefit in respect of the interest at the second valuation date* is the value of the interest stated in the statement; and
- (d) in any other case:
- (i) the *first valuation date* is the date when the interest was acquired by the member spouse; and
  - (ii) the *value of the actual vested benefit in respect of the interest at the first valuation date* is the value of the interest at that date; and
  - (iii) the *second valuation date* is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
  - (iv) the *value of the actual vested benefit in respect of the interest at the second valuation date* is the value of the interest at that date.
- (7) For subparagraphs (6) (a) (iv) and (d) (iv), the value of the actual vested benefit in respect of the interest at the second valuation date includes:
- (a) any amount payable under an earlier payment split that applies in respect of the interest; and
  - (b) the amount of any surcharge debt of the member spouse in respect of the interest.
- (8) For this clause, a reference to the value of the interest stated in a statement:
- (a) is a reference to the value stated in the statement, however that value is described (for example, the member's

account balance, share in the plan, withdrawal benefit);  
and

- (b) if 2 or more values are stated in the statement, is taken to be a reference to the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest if the member spouse had voluntarily ceased to be a member of the plan at the date at which the value is stated.

- (9) In this clause:

**valuation date**, in relation to a superannuation interest to which a member information statement, or similar statement, applies, means the date as at which the value of the interest is stated in the statement.

### **3A Total amount standing to credit of member spouse if benefit were fully vested at relevant date**

- (1) For subclause 2 (1), this clause sets out how to determine the amount (*A*) that would be the total amount standing to the credit of the member spouse in respect of the superannuation interest if the benefit in respect of the interest were fully vested at the relevant date.
- (2) If evidence is before the court in the relevant proceeding of the contents of a member information statement that states the total member credit at the relevant date, the amount (*A*) is the total member credit stated in the statement.
- (3) If subclause (2) does not apply, the amount (*A*) is:

$$A1 + \frac{(A2 - A1) \times X}{D}$$

where:

*A1* is the sum of:

- (a) the total member credit at the first valuation date; and
- (b) the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan) in the period between the first

valuation date and the relevant date (excluding both those dates), less the value of any partial payment of benefits to the member made in that period.

**A2** is the sum of:

- (a) the total member credit at the second valuation date; and
- (b) the value of any partial payment of benefits made to the member in the period beginning on the day after the relevant date and ending at the end of the second valuation date, less the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan), and any interest earned on those benefits, in that period.

**X** is the number of days in the period between the first valuation date and the relevant date (excluding both those dates).

**D** is the number of days in the period beginning on the day after the first valuation date and ending at the end of the second valuation date.

- (4) For the purpose of determining the amount (**A**) under subclause (3):
  - (a) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is after the valuation date stated in that statement:
    - (i) the **first valuation date** is the valuation date stated in that statement; and
    - (ii) the **total member credit at the first valuation date** is the total member credit stated in that statement; and
    - (iii) the **second valuation date** is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
    - (iv) the **total member credit at the second valuation date** is the total member credit at that date; and
  - (b) if, in relation to the interest, evidence of the contents of 2 member information statements is before the court in the relevant proceeding, and the relevant date is between the valuation date stated in one of those statements (the **first**

- 
- statement*) and the valuation date stated in the other statement (the *second statement*):
- (i) the *first valuation date* is the valuation date stated in the first statement; and
  - (ii) the *total member credit at the first valuation date* is the total member credit stated in the first statement; and
  - (iii) the *second valuation date* is the valuation date stated in the second statement; and
  - (iv) the *total member credit at the second valuation date* is the total member credit stated in the second statement; and
- (c) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is before the valuation date stated in that statement:
- (i) the *first valuation date* is the date when the interest was acquired by the member spouse; and
  - (ii) the *total member credit at the first valuation date* is the total member credit at that date; and
  - (iii) the *second valuation date* is the valuation date stated in the statement; and
  - (iv) the *total member credit at the second valuation date* is the total member credit stated in the statement; and
- (d) in any other case:
- (i) the *first valuation date* is the date when the interest was acquired by the member spouse; and
  - (ii) the *total member credit at the first valuation date* is the total member credit at that date; and
  - (iii) the *second valuation date* is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
  - (iv) the *total member credit at the second valuation date* is the total member credit at that date.

- (5) For subparagraphs (4) (a) (iv) and (d) (iv), the total member credit at the second valuation date includes:
- (a) any amount payable under an earlier payment split that applies in respect of the interest; and
  - (b) the amount of any surcharge debt of the member spouse in respect of the interest.
- (6) In this clause:
- total member credit**, in relation to a superannuation interest of a member spouse and a date, means the total amount that would be standing to the credit of the member spouse in respect of the interest if the benefit in respect of the interest were fully vested at that date.
- valuation date**, in relation to a superannuation interest to which a member information statement applies, means the date as at which the total member credit in respect of the interest is stated in the statement.

#### 4 Vesting factors

This clause sets out the vesting factors.

Length of membership (in completed years)	Vesting factors 2, 3, 4, 5, 6 and 7 year vesting periods					
	2 year vesting period	3 year vesting period	4 year vesting period	5 year vesting period	6 year vesting period	7 year vesting period
0	0.82	0.77	0.74	0.71	0.68	0.66
1	0.88	0.84	0.80	0.77	0.74	0.72
2	1.00	0.90	0.86	0.83	0.80	0.77
3		1.00	0.91	0.88	0.85	0.82
4			1.00	0.93	0.89	0.86
5				1.00	0.93	0.90
6					1.00	0.93
7						1.00

Length of membership (in completed years)	Vesting factors 8, 9, 10, 15 and 20 year vesting periods				
	8 year vesting period	9 year vesting period	10 year vesting period	15 year vesting period	20 year vesting period
0	0.63	0.61	0.60	0.52	0.47
1	0.69	0.67	0.65	0.57	0.52
2	0.75	0.72	0.70	0.62	0.56
3	0.79	0.77	0.75	0.66	0.60
4	0.84	0.81	0.79	0.70	0.63
5	0.87	0.84	0.82	0.72	0.66
6	0.90	0.88	0.85	0.75	0.69
7	0.94	0.91	0.88	0.78	0.71
8	1.00	0.94	0.91	0.81	0.74
9		1.00	0.94	0.84	0.77
10			1.00	0.86	0.79
11				0.89	0.82
12				0.91	0.84
13				0.94	0.87
14				0.96	0.89
15				1.00	0.91
16					0.93
17					0.95
18					0.96
19					0.98
20					1.00

### Notes

1. These Regulations amend Statutory Rules 2001 No. 303, as amended by 2002 No. 176.
2. Notified in the *Commonwealth of Australia Gazette* on          2002. *20 December*