

Superannuation (Family Law - Superannuation Act 1922) Orders 2004 2004 No. 85

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 85

Issued by the authority of the Minister for Finance and Administration

Superannuation Act 1922

Orders under section 93DE

Superannuation (Family Law - Superannuation Act 1922) Orders 2004

The *Superannuation Act 1922* (the Act) makes provision for superannuation benefits for persons previously employed by the Australian Government and by certain Australian Government Authorities and for the families of those persons. There have been no contributors under the Act since 1 July 1976.

Part VA of the Act makes specific provision for the splitting of a superannuation interest under the Act when the Commissioner for Superannuation is served with an agreement or order in relation to that interest as a result of actions taken under the *Family Law Act 1975* (the Family Law Act).

For the purposes of the Family Law Act a member may have a superannuation interest under the Act as a person in receipt of pension or a person to whom an associate pension is payable as a result of a previous agreement or order.

When a split occurs the former spouse of the member (described in Part VA as the non-member spouse) is allocated a separate interest in the scheme provided for by the Act and becomes entitled to an associate pension from the operative time of the agreement or order. An appropriate reduction is made to the scheme member's entitlements. The separate interest is based on a transfer amount that will be ascertained from the agreement or order served on the Commissioner.

Section 93DE of the Act provides that the Minister may make Orders prescribing matters required or permitted to be prescribed by Part VA of the Act. The section also provides that an Order made under the section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* and a Statutory Rule for the purposes of the *Statutory Rules Publication Act 1903*.

The purpose of the Orders contained in the Statutory Rule and cited as the **Superannuation (Family Law - Superannuation Act 1922) Orders 2004** (the Orders) is to prescribe the matters required or permitted by Part VA of the Act to be prescribed.

Subsection 93DB(2) of the Act provides that the former spouse is entitled to an associate pension from the operative time at the rate calculated under Orders by reference to the transfer amount. Section 4 of the Orders provides for that calculation.

Section 93DC of the Act provides for the former spouse to be able to elect to commute an associate pension to a lump sum where the rate of that pension is below an amount to be determined under the Orders. Section 5 of the Orders provides for an initial amount and for that amount to be indexed in the future.

Section 93DD of the Act provides for the reduction of the annual rate of pension payable to the member from the operative time to be calculated under the Orders. Section 6 of the Orders provides for a method of calculating the reduced amount that is to be the annual rate of pension payable to the member.

Sections 1, 2 and 3 of these Orders take effect from gazettal. Sections 4, 5 and 6 of these Orders take effect on the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*, which was 14 days after the date of Royal Assent to that Act.

Details of the Orders are explained in the Attachment.

ATTACHMENT

SUPERANNUATION (FAMILY LAW - SUPERANNUATION ACT 1922) ORDERS 2004

Section 1 - Name of Orders

This section provides that the name of the Orders is the **Superannuation (Family Law - Superannuation Act 1922) Orders 2004**.

Section 2 - Commencement

This section provides that sections 1, 2 and 3 of these Orders commence on gazettal and sections 4, 5 and 6 commence on the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*.

Section 3 - Definitions

This section defines the terms "the Act" as the *Superannuation Act 1922* and "the FLS Regulations" as the **Family Law (Superannuation) Regulations 2001**. It also provides that where an expression is defined in section 93DA of the Act, that expression has the same meaning in the Orders.

Section 4 - Annual rate of associate pension for non-member spouse

Subsection 93DB(2) of the Act provides that where a splitting order or agreement is made in relation to a member's entitlements the former spouse is entitled to an associate pension from the operative time at the rate calculated under the Orders by reference to the transfer amount. The operative time is specified in a splitting order and in the case of an agreement is four days after it has been served on the trustees.

Section 4 of these Orders provides for the calculation of the annual rate of associate pension payable to a former spouse in those circumstances. The method is set out in three steps.

Step 1 requires the transfer amount to be identified. This is defined in section 93DA of the Act to mean, in relation to an agreement or order that has been served on the Commissioner, either a base amount specified in that agreement or order or the amount calculated by application of a percentage specified in the agreement or order to the family law value of the member's interest. The family law value is also defined in section 93DA of the Act by reference to an amount determined under the FLS Regulations.

Step 2 requires a factor to be identified for the former spouse that is equal to a value specified in Schedule 4 to the FLS Regulations. The value specified is a pension valuation factor arrived at by consulting the relevant list of factors included in the Schedule using the age and gender of the former spouse. Those factors take into account the fact that the associate pension does not have a reversionary component.

Step 3 divides the transfer amount by the factor worked out in step 2 to arrive at the annual rate of associate pension that is to be payable to the former spouse from the operative time.

Section 5 - Commutation of small associate pension - minimum amount

Subsection 93DC(1) of the Act provides that a former spouse may commute an associate pension where the annual rate of that pension is less than an amount specified in the Orders.

Subsection 5(1) of these Orders provides that the initial amount to be used for the purposes of subsection 93DC(1) of the Act is to be \$1,300. **Subsection 5(2)** provides that the amount specified in subsection 5(1) is to be indexed in the same way as pensions in payment under the Act are indexed under Part XI of the Act. This provides for twice yearly indexation in January and July each year by the Consumer Price Index.

Section 6 - Reduction of standard pension

Subsection 93DD(1) of the Act provides that, where a member's former spouse becomes entitled to a separate interest, the annual rate of standard pension payable to the member is reduced from the operative time to the amount calculated under the Orders. The term 'standard pension' is defined in section 93DA of the Act to mean pensions payable to certain former contributors and the eligible spouses of former contributors under the Act excluding pensions payable to or in respect of orphans under that Act. The definition also includes associate pension arising from an earlier application of section 93DB of the Act. **Section 6** of these Orders provides for the reduction in standard pension. The process has seven possible steps.

Step 1 requires that the annual rate of standard pension payable to the member spouse be identified.

Step 2 requires, if the standard pension payable to the member spouse has been increased because of the existence of eligible children, that the annual rate identified at step 1 should not take into account that increase.

Step 3A applies if the standard pension is a spouse pension or an associate pension and requires the identification of a factor equal to a value specified in the FLS Regulations. The specified value applies only to pensions which do not include a reversionary component.

Step 3B applies to any other standard pension and requires the identification of a factor equal to a different value specified in the FLS Regulations. The specified value in this step applies to pensions which do include a reversionary component.

Step 4 multiplies the standard pension or the amount identified at step 2 by the relevant factor worked out under step 3A or 3B to arrive at a lump sum value of the pension.

Step 5 subtracts the transfer amount from the lump sum calculated by step 4.

Step 6 divides the result of step 5 by the factor worked out at step 3A or 3B to arrive at a rate of pension.

Step 7 provides, where step 2 has applied, that the increase in the annual rate arising from the existence of eligible children should be added to the rate worked out by step 6.

These steps arrive at the annual rate of standard pension that becomes payable to the member spouse from the operative time.