

Superannuation (Family Law - Parliamentary Contributory Superannuation Act 1948) Orders 2004 2004 No. 97

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 97

Issued by the authority of the Minister for Finance and Administration

Parliamentary Contributory Superannuation Act 1948

Orders under subsection 22CK(1)

Superannuation (Family Law & - Parliamentary Contributory Superannuation Act 1948) Orders 2004

The *Parliamentary Contributory Superannuation Act 1948* (the PCS Act) makes provision for and in relation to a superannuation scheme, known as the Parliamentary Contributory Superannuation Scheme (the PCSS).

The contributory members of the PCSS are described in the PCS Act as "members". There are also persons in receipt of a pension under the Act, including retired Senators and Members of the House of Representatives and eligible spouses of retired or deceased scheme members. Since the November 2001 general election new Senators and Members who qualify for a pension on leaving Parliament before age 55 generally will have payment of that pension deferred until age 55. All of these persons are considered under the *Family Law Act 1975* (the Family Law Act) to have superannuation interests in the PCSS. In addition, after the commencement of the amendments to the PCS Act, former spouses will be considered to have a superannuation interest under the Family Law Act.

Part VAA of the PCS Act makes specific provision for splitting of a superannuation interest under the PCS Act when the Secretary of the Department of Finance and Administration (the Secretary) is served with an agreement or order in relation to that interest as a result of actions taken under the Family Law Act. For the purposes of the Family Law Act a member may have a superannuation interest under the PCS Act as a PCSS contributor, a person whose benefits are subject to deferral until age 55, a person in receipt of retiring allowance or a spouse's annuity and a person to whom an associate immediate annuity or an associate deferred annuity is or may be payable as a result of a previous agreement or order.

When a split occurs the former spouse of the member (described in Part VAA as the non-member spouse) is allocated a separate superannuation interest in the scheme based on a transfer amount that will be ascertained from the agreement or order served on the Secretary.

Subsection 22CK(1) of the PCS Act provides that the Minister may make Orders prescribing matters required or permitted by Part VAA. Subsections 22CK(2) and 22CK(3) provide that an Order made under section 22CK 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 - Parliamentary Contributory Superannuation Act 1948) Orders 2004** (the Orders) is to prescribe the matters required or permitted by Part VAA of the PCS Act to be prescribed.

Section 22CA of the PCS Act defines a number of terms used in Part VAA, including **associate annuity, associate deferred annuity, associate immediate annuity, and original interest. Scheme value** refers to an amount determined under the Orders. These Orders provide methods and/or factors that are to be used to calculate the relevant amounts in relation to each of these definitions.

Section 22CD of the PCS Act provides for the creation of a separate superannuation interest for a former spouse in certain circumstances following the receipt of a splitting agreement or order. The term "operative time" describes the time when the splitting agreement or order takes effect. The form of the separate interest varies depending on the circumstances of the member and may be in the form of an associate immediate annuity (if the operative time is in the payment phase) or an associate deferred annuity (if the operative time is in the growth phase). Subsection 22CD(2) provides for the rate of associate immediate annuity to be calculated under the Orders.

Section 22CE of the PCS Act provides for the calculation of, and the payment rules for, associate deferred annuities. Subsection 22CE(1) of the PCS Act provides for the annual rate of an associate deferred annuity to be calculated under the Orders. Subsection 22CE(7) of the PCS Act provides for the calculation, under the Orders, of an amount in respect of the associate deferred annuity that is to be paid in the event that the former spouse dies before the annuity becomes payable. These Orders provide methods and/or factors that are to be used to calculate the annual rate of associate deferred annuity, or the lump sum amount payable on death.

Section 22CF of the PCS Act provides for the former spouse to be able to elect to commute an associate immediate annuity or an associate deferred annuity where the annuity in question is below an amount that is to be determined under the Orders. These Orders provide for an initial amount and for that amount to be indexed.

Paragraph 22CF(3)(b) of the PCS Act provides that where the former spouse commutes an associate deferred annuity, the lump sum payable is to be calculated under the Orders. These Orders provide the method and factors to be used to calculate the lump sum payable under paragraph 22CF(3)(b) of the PCS Act.

Under the Family Law Act superannuation interests may be subject to splitting on the breakdown of a later marriage, including superannuation interests resulting from a previous marriage breakdown. Therefore, where there has been a separate interest created for a former spouse under the PCS Act, that separate interest may also be subject to a later splitting process. Section 22CI of the PCS Act provides for the reduction of associate deferred annuities where there is a splitting agreement or order served in respect of those benefits. Subsection 22CI of the PCS Act provides that, where this has occurred, the associate deferred annuity should be reduced on payment in accordance with the Orders. These Orders provide the method to be used to reduce those benefits.

Section 22CJ of the PCS Act provides for the immediate reduction of a retiring allowance or an annuity (including an associate annuity) where a splitting agreement or order is received in relation to a person who is in receipt of a retiring allowance or annuity under the PCS Act. Subsection 22CJ(1) of the PCS Act provides that the annual rate of retiring allowance or annuity should be reduced to an amount calculated under the Orders. These Orders provide the method and factors to be used to arrive at the reduced rate of retiring allowance or annuity.

Part 1 of the Orders takes effect from gazettal. Part 2 takes effect on the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*.

Details of the Orders are explained in the Attachment.

ATTACHMENT

SUPERANNUATION (FAMILY LAW - PARLIAMENTARY CONTRIBUTORY SUPERANNUATION ACT 1948) ORDERS 2004

PART 1 - PRELIMINARY

Section 1.01 - Name of Orders

This section provides that the name of the instrument is the **Superannuation (Family Law - Parliamentary Contributory Superannuation Act 1948) Orders 2004** (the Orders).

Section 1.02 - Commencement

This section provides for the commencement of Part 1 of the Orders on gazettal and Part 2 of the Orders on commencement of Schedule 1 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*.

Section 1.03 - Definitions

This section defines certain terms used in the Orders and provides that where an expression is defined in section 22CA of the PCS Act, that expression has the same meaning in the Orders.

PART 2 - ORDERS RELATING TO CERTAIN AMOUNTS AND RATES

Section 2.01 - Scheme value

Part VAA of the PCS Act provides for two separate valuations of a member spouse's interest in the PCSS. The family law value is the amount determined under regulations made under the Family Law Act. The other is the scheme value that is defined to mean the amount determined under the Orders.

Section 2.01 provides the definition of "scheme value" for the purposes of section 22CA of the PCS Act.

Paragraph 2.01(a) provides that if the operative time occurred before the commencement of Part 2 of the Orders the scheme value is taken to be equal to the family law value.

Paragraph 2.01(b)(i) provides that if the operative time occurs on or after the commencement of this Part, the scheme value in relation to a member spouse is worked out using the method and factors that apply at the operative time and are contained in Schedule 1 to the Orders.

Paragraph 2.01(b)(ii) provides that, if it is not possible to work out a scheme value using that method and factors, the scheme value is to be determined by an actuary appointed by the Secretary to do so.

Section 2.02 - Annual Rate of Associate Immediate Annuity

Subsection 22CD(2) of the PCS Act provides for the annual rate of associate immediate annuity payable to the former spouse to be calculated under the Orders by reference to the transfer amount for the former spouse.

Subsection 2.02(1) provides that section 2.02 applies where the member spouse is in receipt of a retiring allowance or annuity.

Subsection 2.02(2) provides the method for calculating the annual rate of associate immediate annuity.

Step 1 requires that the "transfer amount" for the former spouse be identified. The "transfer amount" is defined in section 22CA of the PCS Act.

Step 2 provides for the calculation of an annuity factor, based on the former spouse's gender and age and using actuarially calculated pension valuation factors provided by Table 1 in Schedule 2 to the Orders.

Step 3 provides that the annual rate of associate immediate annuity be worked out by dividing the transfer amount identified in step 1 by the annuity factor worked out in Step 2.

Step 4 provides that the annual rate of associate immediate annuity that is worked out in Step 3 is to be increased in the same way and at the same time as the rate of parliamentary allowance is increased. The member spouse's benefit is also increased in the same way and at the same time as the rate of parliamentary allowance is increased.

Subsection 2.02(3) provides for the annual rate of associate immediate annuity to be calculated by an actuary appointed by the Secretary if it cannot be calculated under subsection 2.02(2).

Section 2.03 - Annual Rate of Associate Deferred Annuity

Section 22CE of the PCS Act provides for the calculation of, and circumstances pertaining to the payment of, an associate deferred annuity to a former spouse under the PCS Act. Subsection 22CE(1) provides for the annual rate of an associate deferred annuity to be calculated under the Orders by reference to the transfer amount for the former spouse.

Subsection 2.03(1) requires that the annual rate of associate deferred annuity be calculated according to the steps set out therein.

Step 1 provides that the transfer amount for the former spouse at the operative time be identified. The transfer amount is defined in section 22CA of the PCS Act.

Step 2A provides that the transfer amount be indexed to increases in the 10 year Treasury bond rate for the immediately preceding financial year, for the whole of the period between the operative time and the time when the associate deferred annuity first becomes payable. Step 2A provides that the transfer amount be increased, at the end of each financial year that occurs between the operative time and when the associate deferred annuity first becomes payable and also any part of a financial year that occurs immediately before the associate deferred annuity becomes payable, using the applicable Treasury bond rate in Steps 2B, 2C and 2D and compounded period by period.

Step 2B provides for the calculation of an indexation rate, termed the "applicable Treasury bond rate" for the "first period". The first period is the shorter of the period between the operative time and the end of the financial year in which the operative time occurs and the period between the operative time and when the associate deferred annuity first becomes payable. The applicable Treasury bond rate for the first period obtained by multiplying the number of days in the first period by the Treasury bond rate for bonds with a 10 year term on the last working day of the financial year previous to the financial year in which the first period occurs, dividing the result by 365 and rounding the result to 3 decimal places.

Step 2C is used if one or more full financial years occur immediately after the end of the first period and before the associate deferred annuity first becomes payable. Step 2C provides that the applicable Treasury bond rate for the first full financial year that occurs in the second period

is equal to the Treasury bond rate for bonds with a 10 year term on the last working day of the financial year previous to that financial year rounded to 3 decimal places. Where there is one more full financial years after the second period, Step 2C provides that the applicable bond rate (or rates) is the Treasury bond rate for the relevant financial years, rounded to 3 decimal places.

Step 2D is used where there is a period between the end of a financial year and the time when the associate deferred annuity first becomes payable and Steps 2B and 2C do not apply to the period. The applicable Treasury bond rate for this period obtained by multiplying the number of days in the period by the Treasury bond rate for bonds with a 10 year term for bonds on the last working day of the financial year previous to the financial year in which the period occurs, dividing the result by 365 and rounding the result to 3 decimal places.

Step 3 provides for the calculation of an annuity factor based on the former spouse's gender and age and using actuarially calculated valuation factors provided by Table 2A in Schedule 2 to the Orders (if payable other than on permanent incapacity) or provided by Table 2B in Schedule 2 (if payable on permanent incapacity).

Step 4 provides that the annual rate of associate deferred annuity is to be calculated by dividing the transfer amount, as increased by step 2A, by the annuity factor worked out in step 3.

Step 5 provides that the annual rate of associate deferred annuity calculated in step 4 is to be increased in the same way and at the same time as the rate of parliamentary allowance is increased.

Subsection 2.03(2) provides that the annuity factor is to be worked out by an actuary appointed by the Secretary if it is not possible to work out an annuity factor using step 3 in subsection 2.03(1).

Section 2.04 - Amount payable if former spouse dies before associate deferred annuity becomes payable

Section 2.04 specifies, for subsection 22CE(7) of the PCS Act, the amount that is payable where a former spouse with an entitlement to an associate deferred annuity dies before the annuity becomes payable. The amount payable is equal to the transfer amount increased in the way that is described in step 2A in subsection 2.03(1).

Section 2.05 - Commutation of small associate annuity -maximum amount

Subsection 2.05(1) provides that the annual rate of associate immediate annuity referred to in paragraph 22CF(1)(a) of the PCS Act that may be commuted to a lump sum benefit is an amount less than \$1,300.

Subsection 2.05(2) provides that the annual rate of associate deferred annuity referred to in paragraph 22CF(1)(b) of the PCS Act that may be commuted to a lump sum benefit is an amount less than \$1,300.

Subsection 2.05(3) provides that the amounts referred to in subsections 2.05(1) and 2.05(2) are to be increased in the same way and at the same time as the rate of parliamentary allowance is increased.

Section 2.06 - Commutation of small associate annuity - lump sum payable on election

Section 2.06 provides that if a former spouse commutes an associate deferred annuity and becomes entitled to a lump sum benefit calculated under these Orders in accordance with

paragraph 22CF(3)(b) of the PCS Act, the amount of the lump sum is equal to the transfer amount increased in the way described in step 2A in subsection 2.03(1) of the Orders.

Section 2.07 - Reduction of associate annuity where original interest is entitlement to associate deferred annuity

Section 22CI of the PCS Act provides for the reduction of the member's interest where that interest, at the operative time, consists of an entitlement to an associate deferred annuity. This situation may arise where a person, who has become entitled to a separate interest under the PCS Act (that is, the associate deferred annuity) as a result of a splitting agreement or order, has remarried and separated again. In this situation the person with an entitlement to the original associate deferred annuity becomes the member spouse and the other party becomes a former (that is, non-member) spouse. The former spouse then has an entitlement to an associate deferred annuity in their own right based on the transfer amount allocated to them at the operative time.

When an associate deferred annuity becomes payable under the PCS Act it is necessary to ensure that, where there has been an earlier split or splits of that interest, the annuity is reduced to take account of the transfer amount that has formed the basis of the separate interest arising from the earlier split or splits.

Subsection 22CI(2) of the PCS Act provides that the original associate deferred annuity, when it becomes payable, is reduced in accordance with the Orders.

Section 2.07 provides for the calculation of the reduction of an associate deferred annuity for the purposes of subsection 22CI(2) of the PCS Act.

Step 1 requires that the transfer amount be identified. Transfer amount is defined in section 22CA of the PCS Act.

Step 2 provides that the transfer amount be increased on the basis provided for in Step 2A in subsection 2.03(1) of the Orders when the associate deferred annuity becomes payable.

Step 3 provides that the lump sum value of the original associate deferred annuity as calculated under subsection 22CE(1) of the PCS Act to the date of payment be identified. Step 3 also provides that where the lump sum value of the associate deferred annuity has previously been reduced under these Orders, that reduction must be taken into account.

Step 4 provides that the lump sum value of the original associate deferred annuity that is identified in step 3 is reduced by the increased transfer amount that is worked out in step 2.

Step 5 provides that the reduced lump sum amount worked out in step 4 is substituted for the lump sum calculated in step 2A in subsection 2.03(1) of the Orders for payment of the original associate deferred annuity under section 22CE of the PCS Act.

An example that illustrates the operation of steps 1 to 5 is included immediately after step 5.

Section 2.08 - Reduction of standard allowance or annuity

A standard allowance or annuity is defined in section 22CA of the PCS Act as any pension or annuity, including an associate annuity, payable under the PCS Act that is splittable under the Family Law Act.

Section 22CJ of the PCS Act provides for the reduction of a standard allowance or annuity payable to a member spouse where the operative time for a splitting agreement or order occurs when that benefit is being paid to a member spouse.

A parliamentary pension payable to a retired contributory member of the PCSS comprises a basic pension based on service as a Member of Parliament and an additional pension in respect of any Ministerial or office-holder service in Parliament. A spouse's annuity payable to the eligible spouse of a deceased scheme member represents five-sixths of a deceased member's total pension.

Subsection 2.08(1) provides that for the purposes of subsection 22CJ(1) of the PCS Act, section 2.08 of the Orders applies if standard allowance or annuity is payable to a member spouse in respect of an original interest.

Subsection 2.08(2) provides the method of calculating the amount to which the annual rate of retiring allowance is reduced if the allowance is a retiring allowance (including a retiring allowance that forms the basis of a spouse's annuity).

Step 1 requires that the applicable basic percentage and each applicable additional percentage before the operative time be identified. These percentages are defined in section 22CA of the PCS Act.

Step 2 provides that the applicable basic percentage and each applicable additional percentage identified in Step 1 be multiplied by the transfer factor. The transfer factor is defined in section 22CA of the PCS Act.

Step 3 provides for the reduction of the applicable basic percentage and each applicable additional percentage identified in Step 1. The basic percentage and applicable additional percentages are worked out in Step 2.

Step 4 provides that the reduced applicable basic percentage worked out in step 3 be applied to the rate of parliamentary allowance to produce the annual rate of retiring allowance (other than additional retiring allowance which is calculated in step 5), or the annual rate of spouse's annuity under section 19 of the PCS Act based on the retiring allowance.

Step 5 provides for the application of each reduced applicable additional percentage after the operative time to the rate of ministerial or office holder salary to produce the annual rate of additional retiring allowance or spouse's annuity under section 19 of the PCS Act that is based on the additional retiring allowance.

Subsection 2.08(3) provides the method of calculating the amount to which the annual rate of associate immediate annuity payable in respect of an original interest is to be reduced if the annuity is an associate immediate annuity.

Step 1 requires that the annual rate of associate immediate annuity that was payable in relation to the member spouse immediately before the operative time be identified.

Step 2 provides for the calculation of an annuity factor based on the former spouse's gender and age and using actuarially calculated valuation factors provided for in Table 1 in Schedule 3 to the Orders.

Step 3 provides that the annual rate of associate immediate annuity is to be multiplied by the annuity factor worked out in step 2.

Step 4 provides that the transfer amount is to be subtracted from the amount worked out in Step 3.

Step 5 provides that the amount worked out in Step 4 is to be divided by the annuity factor worked out in Step 2 to determine the annual rate of associate immediate annuity that is payable after the operative time in respect of the original interest.

Step 6 provides that the annual rate is to be increased in the same way, and at the same time, as the rate of parliamentary allowance is increased.

Subsection 2.08(4) provides that if it is not possible to reduce the annual rate of associate annuity in accordance with subsection 2.08(3) of these Orders, the reduction is to be calculated by an actuary appointed for the purpose by the Secretary.

Subsection 2.08(5) provides the method of calculating the amount to which the annual rate of associate deferred annuity that is payable in respect of an original interest is to be reduced if the original interest is an associate deferred annuity.

Step 1 requires that the annual rate of associate deferred annuity that would have been payable in relation to the member spouse immediately before the operative time be identified.

Step 2 provides for the calculation of an annuity factor based on the former spouse's gender and age and using actuarially calculated valuation factors provided for in Table 2A in Schedule 3 (if the associate deferred annuity is not payable on permanent incapacity) or provided by Table 2B in Schedule 3 (if the associate deferred annuity is payable on permanent incapacity) to the Orders.

Step 3 provides that the annual rate of associate deferred annuity is to be multiplied by the annuity factor worked out in Step 2.

Step 4 provides that the transfer amount is to be subtracted from the amount worked out in Step 3.

Step 5 provides that the amount worked out in step 4 is to be divided by the annuity factor worked out in Step 2 to determine the annual rate of associate deferred annuity that would be payable after the operative time in respect of the original interest.

Step 6 provides that the annual rate of associate deferred annuity is to be increased in the same way, and at the same time, as the rate of parliamentary allowance is increased.

Subsection 2.08(6) provides that if it is not possible to reduce the annual rate of an associate deferred annuity using the method set out in subsection 2.08(5) of these Orders, the annual rate of associate deferred annuity is to be determined by an actuary appointed by the Secretary for that purpose.

SCHEDULE 1 TO THE ORDERS

Schedule 1 to the Orders provides, for the purposes of subsection 2.01(1) of the Orders, the methods and factors to be used to determine the scheme value of the member spouse's superannuation interest at the operative time. The methods and factors have been provided by an actuary.

Part 1 - Methods

Part 1 of Schedule 1 to these Orders provides the methods to be used to determine the scheme value in all the various circumstances of persons who have superannuation interests in the PCSS.

Part 2 - Scheme factors

Part 2 of Schedule 1 to the Orders provides the factors that are required to apply the methods provided by Part 1 to determine the scheme value.

SCHEDULE 2 TO THE ORDERS

Schedule 2 to the Orders provides the annuity factors applicable to former spouses that are required for the purposes of subsections 2.02(2) and 2.03(1) of the Orders. The factors have been provided by an actuary.

SCHEDULE 3 TO THE ORDERS

Schedule 3 to the Orders provides the annuity factors applicable to member spouses that are required for the purposes of subsections 2.08(3) and 2.08(5) of the Orders. The factors have been provided by an actuary.