Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004

Statutory Rules 2004 No. 99 as amended

made under the

Defence Force Retirement and Death Benefits Act 1973

This compilation was prepared on 8 August 2012
taking into account amendments up to *Defence Force Retirement and Death Benefits (Family Law Superannuation) Amendment Order 2012 (No. 1)*

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Contents

Part 1   Preliminary

1.01   **Name of Orders** [*see* Note 1]

These Orders are the *Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004.*

1.02   **Commencement** [*see* Note 1]

These Orders commence, or are taken to have commenced, on the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004.*

1.03   **Definitions**

(1)   In these Orders:

Act means the *Defence Force Retirement and Death Benefits Act 1973.*

Family Law Act means the *Family Law Act 1975.*

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

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

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

FLS Regulations means the *Family Law (Superannuation) Regulations 2001.*

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

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

Statistician means the Australian Statistician.

(2) An expression that is used in these Orders and defined in section 49A of the Act has the meaning given by that section.

> *Note*   Section 49A of the Act defines expressions including ***non-member spouse***, ***operative time*** and ***transfer amount***. Some expressions are defined in section 49A to have the same meaning as in the Family Law Act.

Part 2   Orders for the calculation of certain amounts

2.01   Scheme value

For the definition of *scheme value* in section 49A of the Act, the scheme value in relation to a member spouse is determined as follows:

Step 1   Identify the methodology and factors used to determine the family law value in relation to the member spouse in accordance with section 90MT of the Family Law Act.

Note   The family law value is determined in accordance with the FLS Regulations that are made for paragraph 90MT (2) (a) of the Family Law Act. The process of determining the family law value may include reliance on methodology and factors approved by the Attorney-General under subsection 90MT (3) of that Act.

Step 2   Substitute the factors with factors nominated by an actuary for these Orders.

Step 3   Use the methodology identified in step 1, and the factors substituted in step 2, to determine the scheme value in relation to the member spouse.

2.02   Annual rate of associate pension

(1) For subsection 49B (2) of the Act, the annual rate of associate pension payable to a non-member spouse to whom that subsection applies is calculated as follows:

Step 1   Identify the transfer amount in relation to the non-member spouse.

Note   Subsection 49B (2) of the Act requires the rate of associate pension to be calculated by reference to the transfer amount.

>> **Step 2**   Identify a pension factor, nominated by an actuary for these Orders, based on the non-member spouse's age and gender.
>>
>> *Note* Schedule 4 to the FLS Regulations sets out general pension factors based on age and gender, but those factors are not specific to benefits payable under the Act.
>>
>> **Step 3**   Divide the transfer amount by the pension factor.

The result is the annual rate of the associate pension.

Note   The associate pension does not include a reversionary component.

2.03   Indexation of associate pension

(1) This section applies if the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of the half-year immediately preceding a prescribed half-year (*the CPI index number*) exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of any earlier half-year.

(2) A person to whom an associate pension was payable immediately before the commencement of the prescribed half-year is entitled, at the commencement of the prescribed half-year, to an increase in the rate at which the associate pension was payable to him or her immediately before the commencement of the prescribed half-year (*the relevant rate of associate pension*).

(3) The increase is the *prescribed percentage*, worked out in accordance with subsection (4), of the relevant rate of associate pension.

(4) To work out the prescribed percentage for a prescribed half-year:

   (a) from the CPI index number subtract the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician for the first

quarter of any half-year earlier than the half-year immediately preceding the prescribed half-year; and

(b) express the result as a percentage of the highest all groups consumer price index number in paragraph (a).

(5) If:

(a) a person to whom an associate pension is payable would be entitled to an increase in the rate at which the associate pension was payable to him or her immediately before the commencement of the prescribed half-year; and

(b) the associate pension became payable in relation to a member spouse's pension that first became payable to the member spouse on or before 16 June or 16 December (as the case requires) in the preceding half-year;

the amount of the increase is an amount calculated in accordance with the formula:

$$\text{full increase} \times \frac{\text{number of months in period}}{6}$$

where:

full increase means the amount of the increase that would have been applicable but for this subsection.

number of months in period means the number of months in the period that began on the day on which the member spouse's pension became payable and ended on 30 June or 31 December in the preceding half-year.

(6) If the period referred to in subsection (5) is less than 1 month, that period is treated as 1 month.

(7) If the period referred to in subsection (5) consists of a number of whole months and a part of a month:

(a) where the number of days in that part of that month is less than one-half of the number of days in that month — that part is disregarded; and

(b) where the number of days in that part of that month is more than one-half of the number of days in that month — that part is treated as a whole month.

(8) In this section:

preceding half-year, in relation to a pension, means the half-year immediately preceding the prescribed half-year.

2.04   Commutation of small associate pension — amount

(1) For subsection 49C (1) of the Act, the amount is $1 303.03.

(2) On 1 January 2005, the amount mentioned in subsection (1) is indexed in accordance with section 2.05.

(3) On 1 July 2005, and on 1 January and 1 July in each year following 2005, the indexed amount in force immediately before that date is indexed in accordance with section 2.05.

2.05   Indexation of amount for small associate pension

(1) If the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of the half-year before the date of the indexation (factor A) exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of any earlier half-year, not being a half-year earlier than the half-year that commenced on 1 January 2004 (factor B), the amount is increased at the rate worked out in accordance with subsection (2).

(2) The rate is $\mathbf{A} - \mathbf{B}$ expressed as a percentage of $\mathbf{B}$.

2.06   Reduction of later standard pension

(1) For subsection 49D (1) of the Act, this section applies to a standard pension in respect of an original interest if the standard pension becomes payable to a member spouse at a time after the operative time.

   Note This section applies to a pension that becomes payable to a DFRDB Scheme member at a time after the family law superannuation splitting process. At the time of the family law superannuation splitting process, the member's benefit was in the growth phase because the member was still serving or had a deferred benefit.

(2) The amount to which the annual rate of standard pension payable to the member spouse after the operative time is to be reduced is calculated as follows:

Step 1	Identify the percentage of the annual rate of salary that would have been applicable to the member spouse at retirement if there had not been a payment split (*pre-split retirement percentage*).
Step 2	Identify the percentage of the annual rate of salary that would have been attributable to the member spouse as pension immediately before the operative time, if the member spouse had been able to retire at the operative time, (using factors identified by the Actuary) (*hypothetical percentage entitlement*).
Step 3	Establish the proportion of the hypothetical percentage entitlement that relates to the non-member spouse (*non-member spouse percentage*).

Example

If, at the operative time, under the payment split the non-member spouse was entitled to 70% and the hypothetical percentage entitlement of the member spouse was 25%, the non-member spouse percentage is:

$$25 \times \frac{70}{100} = 17.5\%$$

Step 4	Subtract the non-member spouse percentage from the pre-split retirement percentage.
Step 5	Multiply the percentage derived from step 4 by the member spouse's salary on retirement.

The result is the annual rate of the standard pension payable to the member spouse.

2.07   Reduction of later lump sum amount

(1) For subsection 49D (3) of the Act, this section applies to a lump sum in respect of an original interest if the lump sum becomes payable to a member spouse at a time after the operative time.

Note This section applies to a lump sum that becomes payable to a DFRDB Scheme member at a time after the family law superannuation splitting process. At the time of the family law superannuation splitting process, the member's benefit was in the growth phase because the member was still serving or had a deferred benefit.

(2) The amount to which the lump sum payable to the member spouse after the operative time is to be reduced is calculated as follows:

Step 1   Identify the lump sum that would have been applicable to the member spouse at retirement if there had not been a payment split (*the pre-split retirement amount*).

Step 2   Identify the amount of the lump sum that would have been applicable to the member spouse immediately before the operative time, if the member spouse had been able to retire at the operative time, (using factors identified by the Actuary) (*the hypothetical entitlement*).

Step 3   Establish the amount of the hypothetical entitlement that relates to the non-member spouse (the *non-member spouse amount*).

Step 4   Subtract the non-member spouse amount from the pre-split retirement amount.

The result is the lump sum payable to the member spouse.

2.08   Reduction of standard pension and associated reversions

For subsection 49E (1) of the Act, the amount to which an annual rate of standard pension payable in respect of an original interest is to be reduced is calculated as follows:

Step 1   Identify the annual rate of standard pension that was payable to the member spouse immediately before the operative time.

Step 2   Work out a reduction factor using the formula

$$\frac{\text{scheme value - transfer amount}}{\text{scheme value}}$$

Step 3   Multiply the amount identified in step 1 by the reduction factor.

                    If the pension includes a non-indexed component, multiply the component by the reduction factor.

                    The result is the annual rate of the standard pension payable after the operative time in respect of the original interest.

Step 4   Identify the annual rate of the indexed reversionary pension that would have been payable to a surviving spouse if the member spouse had died immediately before the operative time.

Step 5   Multiply the amount identified in Step 4 by the reduction factor.

                    The result is the annual rate of indexed reversionary pension payable after the operative time in respect of the original interest.

Step 6   Identify the annual rate of the non-indexed reversionary pension that would have been payable to a surviving spouse if the member spouse had died immediately before the operative time.

Step 7   Multiply the amount identified in Step 6 by the reduction factor.

The result is the annual rate of non-indexed reversionary pension payable after the operative time in respect of the original interest.

2.09   Reduction of later standard pensions and associated reversions not payable under section 38 of the Act

(1) For subsection 49E (1A) of the Act, the amount to which an annual rate of a later standard pension, payable in respect of an original interest, is to be reduced is calculated as follows:

Step 1   Identify:

(a) the annual rate of later standard pension that would have been payable to the member spouse at the date of commencement of the later standard pension had there not been a family law payment split (the ***unreduced standard pension***); and

(b) the indexed and non-indexed components of the unreduced standard pension.

Step 2   Identify:

(a) the annual rate of standard pension that was payable to the member spouse immediately before the operative time (the ***pre-split standard pension***); and

(b) the indexed and non-indexed components of the pre-split standard pension.

Step 3   Work out a reduction factor using the formula:

$$\frac{\text{scheme value - transfer amount}}{\text{scheme value}}$$

Step 4   Work out the annual rate of the standard pension payable in respect of the original interest to the member spouse after the operative time (the ***post-split standard pension***) by multiplying the pre-split standard pension by the reduction factor.

The indexed and non-indexed components of the post-split standard pension are in the same proportion for the post-split standard pension as they were for the pre-split standard pension.

Step 5   Work out the reduction in the standard pension at the operative time (the ***reduction in standard pension***) by subtracting the post-split standard pension from the pre-split standard pension.

Work out the corresponding reduction in the indexed component of the standard pension at the operative time by subtracting the indexed component of the post-split standard pension in step 4 from the indexed component of the pre-split standard pension in step 2.

Work out the corresponding reduction in the non-indexed component of the standard pension at the operative time by subtracting the non-indexed component of the post-split standard pension in step 4 from the non-indexed component of the pre-split standard pension in step 2.

Step 6   Work out the increase in the indexed component of the reduction in standard pension for indexation during the period between the operative time and the date of commencement of the later standard pension as follows:

(a) work out the ***indexation factor*** by dividing the indexed component of the pre-split standard pension from step 2, increased in accordance with Part XA of the Act in the period from the operative time to the date of commencement of the later standard pension, by the indexed component of the pre-split standard pension from step 2;

(b) multiply the indexation factor by the indexed component of the reduction of the standard pension from step 5.

Step 7   Work out the annual rate of the standard pension payable to the member spouse at the date of commencement of the later standard pension (the ***current standard pension***) by subtracting the following amounts from the unreduced standard pension:

(a) the current value of the indexed component of the reduction in standard pension from step 6;

(b) the non-indexed component of the reduction in standard pension from step 5.

Step 8   Work out the annual rate of the non-indexed component of the standard pension payable to the member spouse at the date of commencement of the later standard pension (the ***current standard pension non-indexed component***) by subtracting the reduction in the non-indexed component of the standard pension at the operative time from step 5 from the non-indexed component of the unreduced standard pension identified in step 1.

If the amount calculated is less than zero, the current standard pension non-indexed component is zero.

Step 9   Work out the annual rate of the indexed component of the standard pension payable to the member spouse at the date of commencement of the later standard pension by subtracting the current standard pension non-indexed component from step 8 from the current standard pension in step 7.

(2) For subsection 49E (1A) of the Act, the amount to which an annual rate of a later reversionary pension is to be reduced is worked as follows:

Step 1   Identify:
(a) the annual rate of the reversionary pension that would have been payable to a surviving spouse at the date of commencement of the later standard pension if there had not been a family law split (the ***unreduced reversionary pension***); and

(b) the indexed and non-indexed components of the unreduced reversionary pension.

Step 2   Identify:
>   (a) the annual rate of the reversionary pension that would have been payable to a surviving spouse if the member spouse had died immediately before the operative time (the *pre-split reversionary pension*); and
>   (b) the indexed and non-indexed components of the pre-split reversionary pension.

Step 3   Work out the annual rate of reversionary pension that would have been payable in respect of the original interest to a surviving spouse of the member spouse had died immediately after the operative time (the *post-split reversionary pension*) by multiplying the pre-split reversionary pension by the reduction factor calculated in step 3 in subsection (1).

Work out the indexed and non-indexed components of the post-split reversionary pension. They are in the same proportion to the post-split reversionary pension as they were to the pre-split reversionary pension.

Step 4   Work out the reduction in the reversionary pension at the operative time (the *reduction in reversionary pension*) by subtracting the post-split reversionary pension from the pre-split reversionary pension.

Work out the corresponding reductions in the indexed and non-indexed components of the reversionary pension at the operative time by subtracting the post-split pension components in step 3 from the pre-split pension components in step 2.

Step 5   Work out the increase in the indexed component of the reduction in reversionary pension for indexation during the period between the operative time and the date of commencement of the later standard pension by multiplying the indexation factor calculated in step 6 (a) in subsection (1) by the indexed component of the reduction in reversionary pension from step 4.

Step 6		Work out the annual rate of the standard reversionary pension that would be payable to a surviving spouse if the member spouse were to have died at the date of commencement of the later standard pension (the *current reversionary pension*) by subtracting the following amounts from the unreduced reversionary pension:
	(a)	the current value of the indexed component of the reduction in reversionary pension from step 5;
	(b)	the non-indexed component of the reduction in reversionary pension from step 4.
Step 7		Work out the annual rate of the non-indexed component of the current reversionary pension that would be payable to a surviving spouse if the member spouse were to have died at the date of commencement of the later standard pension (the *current reversionary pension non-indexed component*) by subtracting the reduction in the non-indexed component of the reversionary pension at the operative time from step 4 from the non-indexed component of the unreduced standard pension identified in step 1.
		If the amount calculated is less than zero, the current reversionary pension non-indexed component is zero.
Step 8		Work out the annual rate of the indexed component of the reversionary pension that would be payable to a surviving spouse if the member spouse were to have died at the date of commencement of the later standard pension by subtracting the current reversionary pension non-indexed component from step 7 from the current reversionary pension in step 6.

2.10   Reduction of later standard pensions payable under section 38 of the Act

For subsection 49E (1A) of the Act, the amount to which an annual rate of a later standard pension payable under section 38 of the Act in respect of an original interest is to be reduced is calculated as follows:

Step 1   Identify:

(a) the annual rate of the standard reversionary pension that would have been payable to a surviving spouse at the date of commencement of the later standard pension if there had not been a family law split (the *unreduced standard reversionary pension*); and

(b) the indexed and non-indexed components of the unreduced standard reversionary pension.

Step 2   Identify:

(a) the annual rate of the standard reversionary pension that would have been payable to a surviving spouse if the member spouse had died immediately before the operative time (the *pre-split standard reversionary pension*); and

(b) the indexed and non-indexed components of the pre-split standard reversionary pension.

Step 3   Work out the annual rate of standard reversionary pension payable in respect of the original interest to a surviving spouse of the member spouse had died immediately after the operative time (the *post-split standard reversionary pension*) by multiplying the pre-split standard reversionary pension by the reduction factor calculated in step 3 in subsection 2.09 (1).

Work out the indexed and non-indexed components of the post-split standard reversionary pension. They are in the same proportion to the post-split standard reversionary pension as they were to the pre-split standard reversionary pension.

Step 4   Work out the reduction in the standard reversionary pension at the operative time (the *reduction in standard reversionary pension*) by subtracting the post-split standard reversionary pension from the pre-split standard reversionary pension.

Work out the corresponding reductions in the indexed and non-indexed components of the standard reversionary pension at the operative time by subtracting the post-split pension components in step 3 from the pre-split pension components in step 2.

Step 5   Work out the increase in the indexed component of the reduction in standard reversionary pension for indexation during the period between the operative time and the date of commencement of the later standard pension as follows:

(a) work out the *indexation factor* by dividing the indexed component of the pre-split standard reversionary pension from step 2, increased in accordance with Part XA of the Act in the period from the operative time to the date of commencement of the later standard pension, by the indexed component of the pre-split standard reversionary pension from step 2;

(b) multiply the indexation factor by the indexed component of the reduction in standard reversionary pension from step 4.

Step 6   Work out the annual rate of the standard reversionary pension payable under section 38 of the Act in respect of the original interest at the date of commencement of the later standard pension by subtracting the following amounts from the unreduced standard reversionary pension:

    (a) the current value of the indexed component of the reduction in standard reversionary pension from step 5;

    (b) the non-indexed component of the reduction in standard reversionary pension from step 4.

Notes to the *Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004*

Note 1

The *Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004* (in force under the *Defence Force Retirement and Death Benefits Act 1973*) as shown in this compilation comprise Statutory Rules 2004 No. 99 amended as indicated in the Tables below.

Table of Instruments

Year and number	Date of notification in *Gazette or* FRLI registration	Date of commencement	Application, saving or transitional provisions
2004 No. 99	20 May 2004	18 May 2004 (*see* s. 1.02)	
2004 No. 408	24 Dec 2004	Ss. 1–3 and Schedule 1: 1 July 2004 Remainder: 24 Dec 2004	—
Defence Force Retirement and Death Benefits (Family Law Superannuation) Amendment Order 2012 (No. 1)	7 Aug 2012 (*see* F2012L01662)	1 Jan 2008	—

Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Part 2	
S. 2.04	am. 2004 No. 408
S. 2.05	am. 2004 No. 408
S. 2.09	ad. 2012 No. 1
S. 2.10	ad. 2012 No. 1