

Papua New Guinea (Staffing Assistance) (Superannuation) Amendment Regulations 2004 (No. 1) 2004 No. 124

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 124

Issued by the authority of the Minister for Finance and Administration

Papua New Guinea (Staffing Assistance) Act 1973

Papua New Guinea (Staffing Assistance) (Superannuation) Amendment Regulations 2004 (No. 1)

Subsection 65(1) of the *Papua New Guinea (Staffing Assistance) Act 1973* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that by the Act are required or permitted to be prescribed or to be provided for by regulation, or that are necessary or convenient to be prescribed for giving effect to the Act.

Section 38 of the Act provides that regulations may be made for superannuation purposes, including in relation to payments to be made by the Commonwealth to and in relation to persons eligible for benefits under the regulations. Regulations made pursuant to section 38 of the Act are contained in the *Papua New Guinea (Staffing Assistance) (Superannuation) Regulations 1973* (the Principal Regulations).

The Papua New Guinea Superannuation Fund (the Fund) was established in 1951 under the Superannuation (Papua and New Guinea) Ordinance 1951 to provide benefits to career employees in the Public Service in Papua New Guinea. On 1 December 1973, the Fund was brought within the ambit of the Act. On Papua New Guinea attaining independence, a decision was made to wind up the Australian Staffing Assistance Group, which was the Australian employing authority for the majority of contributors, on 30 June 1976. The Papua New Guinea Superannuation Fund ceased to exist on that date and the Australian Government commenced to pay all benefit payments in relation to former contributors to the Fund. There are no longer any contributors to the Papua New Guinea superannuation arrangements, however, there remain around 400 pensioners currently receiving benefits under these arrangements.

The purpose of the Regulations is to amend the Principal Regulations as a consequence of the changes made to the *Family Law Act 1975* (the FL Act) by the *Family Law Legislation Amendment (Superannuation) Act 2001* and consequential changes to the regulations under that Act (the new Family Law regime). The new Family Law regime ensures that superannuation interests form part of the property of married couples and provides for those interests to be split between the parties where there is a property settlement. The new regime applies to all superannuation schemes including the Papua New Guinea superannuation arrangements provided for by the Principal Regulations.

Other Australian Government superannuation arrangements have been amended by the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* to provide that, where a scheme trustee is required to split a superannuation interest as a result of the new Family Law regime, a separate interest will be created for the former spouse of the member and the member's interest will be consequently reduced. The Regulations will insert Part 9 into the Principal Regulations to apply this separate interest approach to the Papua New Guinea superannuation arrangements. Further details regarding the new regime and the amendments to other Australian Government superannuation arrangements are included in [Attachment A](#).

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

Details of the Regulations are set out in [Attachment B](#).

The Regulations commence on gazetta.

ATTACHMENT A

The new Family Law regime in relation to Australian Government superannuation arrangements

The new regime provides a method for the valuation of an accrued superannuation interest in a defined benefit scheme at the time of marital breakdown. That value can then be taken into account for the purposes of a property settlement and can be split between the parties. Parties may agree, or the Family Court may order, that the trustees of a superannuation scheme must allocate a base amount, or the amount calculated by applying a percentage to the valuation, to the former spouse of a scheme member (described in the Family Law regime as a non-member spouse). Where the interest is a benefit in payment (as all interests in the Papua New Guinea arrangements are), the default arrangements under the new Family Law regime provide for the splitting of all future superannuation payments between the parties.

As an alternative to the default arrangements, the new regime also allows superannuation scheme rules to be amended to allow for a separate interest to be created in the scheme for the former spouse of the member.

Under the separate interest approach, when scheme trustees are served with an agreement by separating parties or a Court Order, a separate interest will be created for the non-member and an amount of at least the base amount, or the percentage of the valuation, specified in the agreement or Order will be transferred to the new interest. Where the original interest is a benefit in payment, as will be the case in relation to the arrangements provided for by the *Papua New Guinea (Staffing Assistance) (Superannuation) Regulations 1973* (the Principal Regulations), payment can commence immediately to the former spouse. The basis of the separate interest will be a lump sum that will be converted to an annual rate of pension payable during the life of the former spouse. The conversion will be based on factors provided by an actuary relevant to the former spouse's age and gender and the pension will not have a reversionary component. The pension payable to the member will be reduced to reflect the amount transferred to the former spouse.

For the purposes of the Family Law Act a member may have a superannuation interest under the Principal Regulations as a person in receipt of pension, including a widow's pension, or a person to whom an associate pension is payable as a result of a previous agreement or Order.

The *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* (the amending Act), amended other legislation providing superannuation schemes for Australian Government employees to apply the alternative separate interest approach to the scheme rules. One of the Acts amended was the *Superannuation Act 1922* (the 1922 Act) that provides for the payment of pensions to, or in respect of, certain former Australian Government civilian employees. Conditions in relation to pensions payable under the 1922 Act are generally similar to those payable under the Principal Regulations.

The approach adopted in the Regulations is similar to the approach adopted in relation to the 1922 Act for the splitting of a superannuation interest under that Act.

Section 20 of the *Papua New Guinea (Staffing Assistance) Act 1973* (the Act) provides that the Commissioner for Superannuation appointed under the *Superannuation Act 1976* has responsibility for the general administration of the superannuation arrangements provided for by the Act and the Principal Regulations. As a result, the Commissioner is the scheme trustee for the purposes of the FL Act.

The Regulations insert Part 9 into the Principal Regulations to provide for the separate interest approach to be applied when the Commissioner, as scheme trustee of the scheme, receives a splitting agreement or Order in relation to a person who is in receipt of a pension under the Principal Regulations. The separate interest will be payable in the form of an indexed pension payable for life without a reversionary component from the operative time. The original pension will be reduced from the operative time to take account of the creation of the separate interest.

ATTACHMENT B

THE PAPUA NEW GUINEA (STAFFING ASSISTANCE) (SUPERANNUATION) REGULATIONS 2004 (NO. 1)

Regulation 1 - Name of Regulations

Regulation 1 provides that the Regulations are called the *Papua New Guinea (Staffing Assistance) (Superannuation) Amendment Regulations 2004 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides for the commencement of the Regulations on gazettal.

Regulation 3 - Amendment of the Principal Regulations

Regulation 3 provides that Schedule 1 amends the *Papua New Guinea (Staffing Assistance) (Superannuation) Regulations 1973* (the Principal Regulations).

Schedule 1 - Amendments

Item 1 of Schedule 1 replaces the definition of **pension** with a new definition that includes an associate pension payable under regulation 91. This is the pension payable to a former spouse as a result of the creation of a separate interest. The effect of the new definition is to ensure that the pension payable to a former spouse is increased twice yearly under Part XA of the Principal Regulations in the same way as other pensions.

Item 2 of Schedule 1 amends regulation 42 of the Principal Regulations. Subregulation 42(1) and (1A) provide for the payment of reversionary benefits to eligible widows and children on the death of a male pensioner. Item 2 inserts new subregulation 42(1B) to ensure that no reversionary benefits become payable on the death of a person to whom associate pension was payable.

Item 3 of Schedule 1 inserts a new Part 9 into the Principal Regulations to provide for the splitting of a superannuation interest under those Regulations when the Commissioner for Superannuation receives a splitting agreement or splitting order in respect of a superannuation interest in the scheme.

PART 9 - FAMILY LAW SPLITTING

DIVISION 1 - PRELIMINARY

Regulation 90 - Definitions

New subregulation 90(1) provides a number of definitions.

The definitions of **associate pension** and **original interest** refer directly to other provisions being inserted into the Principal Regulations. The terms of **member spouse, non-member spouse, payment split, splitting order and superannuation interest** are all defined with reference to the definitions in the FL Act (see definition below).

Base amount is defined to include a base amount specified in or calculated under a splitting agreement between the parties as well as an amount allocated by a splitting order from the Family Court.

Family law value is the amount that would be the value of a superannuation interest under the Principal Regulations as determined under the FL Act at the operative time (see definition below).

FL Act is the *Family Law Act 1975*.

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

Non-standard pension is defined to mean a pension that is not a **standard pension** (see definition below). A non-standard pension is, generally, a pension that would not be a splittable pension under the FL Act such as a pension payable to an orphan.

Operative time is defined in terms of the FL Act in relation to a splitting agreement or order. For a splitting agreement this is the beginning of the fourth business day after the agreement and other documentation is served on the trustee. For a splitting order the operative time is specified in the order.

Splitting agreement is defined to mean either a splitting agreement or a flag lifting agreement under the FL Act.

Splitting percentage is defined to mean the percentage specified in a splitting agreement or splitting order under the FL Act.

Standard pension is defined to be a pension payable under a number of provisions of the Principal Regulations including an associate pension. Provisions of the Regulations that provide for a pension that would not be a splittable pension under the FL Act such as a pension payable to an orphan are not included and are therefore non-standard pensions (see definition above).

Transfer amount is either the base amount or the amount calculated by applying the splitting percentage to the family law value. The splitting agreement or order will require that at least this amount be transferred to the former spouse of the member (the FL Act non-member spouse).

New subregulation 90(2) clarifies the definition of **family law value** to ensure that the relevant date for the purposes of calculating the valuation is the operative time.

DIVISION 2 - BENEFITS FOR NON-MEMBER SPOUSE

Regulation 91 - Benefits for non-member spouse

When the Commissioner receives a splitting agreement or order in relation to a person (the member) who has a superannuation interest under the Principal Regulations, new regulation 91 provides, subject to certain conditions, for the person's former spouse to be entitled to an associate pension from the operative time.

- The member may have an entitlement under the Principal Regulations to a retirement pension, a widow's pension or an associate pension.

The conditions for the creation of the separate interest are that:

- the member's interest is not a pension under subregulation 35(4), 41(2) or 42(6) or regulation 43 which are orphan's pensions;
- both the member and the former spouse are alive at the operative time; and
- the base amount must not be more than the family law value of the interest.

Benefits payable directly to children or orphans are not splittable payments under the FL Act and should not be subject to interest splitting.

If either of the parties should die after an agreement or order has been made and before the operative time no separate interest will be created and the FL Act default arrangements will operate.

Subregulation 91(3) provides the steps for the calculation of the rate of the associate pension payable to the former spouse. Step 1 identifies the transfer amount. Transfer amount is defined in subregulation 90(1) of the Principal Regulations 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 splitting percentage that applies under the agreement or order to the family law value of the interest.

Step 2 identifies a factor 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. These 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.

Regulation 92 - Commutation of small associate pension

Subregulation 92(1) provides that a former spouse may elect to commute an associate pension where the annual rate of that pension is less than \$1,300. Subregulation 92(2) provides that an election under subregulation 92(1) must be made to the Commissioner not later than 3 months after the former spouse becomes entitled to associate pension. Subregulation 92(3) provides that, following such an election, the lump sum that becomes payable is the transfer amount.

Subregulation 92(4) provides for the indexation using the methodology in Part XA of the Principal Regulations, of the amount specified in subregulation 92(1) as if it were an annual rate of pension. This provides for twice yearly indexation in January and July each year by the Consumer Price Index.

Regulation 93 - Reduction of standard pension

Subregulation 93(1) provides that, where a former spouse becomes entitled to a separate interest, the annual rate of standard pension payable to the member is reduced from the operative time. The process of calculating the reduced annual rate has five steps.

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

Step 2A applies if the standard pension is a widow's pension or an associate pension and provides for the identification of a factor equal to a value specified in Schedule 4 to the *Family Law (Superannuation) Regulations 2001*. The specified value applies only to pensions that do not include a reversionary component.

Step 2B applies to a standard pension other than one referred to in step 2A and provides for the identification of a factor equal to a different value specified in Schedule 4 to the *Family Law (Superannuation) Regulations 2001*. The specified value in this step applies to pensions that do include a reversionary component.

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

Step 4 subtracts the transfer amount from the lump sum calculated by step 3.

Step 5 divides the result of step 4 by the factor worked out at step 2A or 2B to arrive at the annual rate of standard pension that becomes payable to the member from the operative time.

Subregulation 93(2) provides that the reduction calculated by subregulation 93(1) is to be disregarded for the purposes of calculating any non-standard pension that may become payable at a later date. This is necessary to ensure that, if the member dies and a non-standard pension

such as an orphan benefit becomes payable, the rate of the non-standard pension will be calculated as if no reduction of the member pension had occurred.

Item 4 of Schedule 1 inserts new subregulation 111J(1A). The new subregulation qualifies subregulation 111J(1) that provides for the payment of a reversionary pension to the widow of a pensioner in certain circumstances. Subregulation 111J(1A) provides that subregulation 111J(1) does not apply on the death of a person who was in receipt of associate pension.