

FAMILY LAW (SUPERANNUATION) REGULATIONS 2025

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Under subsection 125(1) of the *Family Law Act 1975*

PURPOSE AND OPERATION OF THE INSTRUMENT

Parts VIIIB and VIIC of the *Family Law Act 1975* (Family Law Act) provide for the division of superannuation between married and de facto couples upon the breakdown of a relationship. Subsection 125(1) of the Family Law Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Family Law Act, prescribing all matters required or permitted by the Family Law Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Family Law Act.

The Family Law (Superannuation) Regulations 2001 (2001 Regulations) give effect to the distribution of superannuation interests under Parts VIIIB and VIIC of the Family Law Act by prescribing the methods for valuing superannuation interests, the way in which payment splits are to be put into effect, and the information that trustees must provide to parties.

The 2001 Regulations are scheduled to sunset on 1 April 2025. Sunsetting is the automatic repeal of instruments after a fixed period of time, subject to some exceptions under the *Legislation Act 2003*.

Paragraph 4(f) of the Legislation (Family Law Instruments) Sunset-altering Declaration 2018 deferred the sunsetting date for the 2001 Regulations from 1 October 2019 to 1 April 2023. Paragraph 4(c) of the Legislation (Deferral of Sunsetting-Family Law Instruments) Certificate 2022 then deferred this date to 1 April 2025.

The deferral of sunsetting enabled the Attorney-General's Department to conduct a fit-for purpose and thematic review, which ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. The review found the 2001 Regulations were operating as intended and continue to be necessary, however, recommended some technical updates. The Family Law (Superannuation) Regulations 2025 (2025 Regulations) will incorporate the findings of the review.

The 2001 Regulations will be replaced by the 2025 Regulations. Information on a comparison table of provisions is below.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

CONSULTATION

As the 2025 Regulations will replace the 2001 Regulations, they were subject to consultation with relevant stakeholders.

The Australian Government Actuary (AGA) was closely consulted throughout the review and development of the 2025 Regulations. The AGA provided advice that informed amendments to modernise provisions and ensure they operate effectively into the future reflecting

developments in superannuation products and the broader superannuation environment. The AGA undertook a comprehensive review of the valuation methodology used to value superannuation interests for family law purposes. The methods (actuarial formulae) and factors (tables of numbers based on different mortality rates, benefit entitlements, ages of retirement) had not been updated since the 2001 Regulations were made. The AGA's actuarial advice has directly informed the 2025 Regulations to ensure they continue to support accurate valuation of a wide range of superannuation interests based on current demographic and actuarial assumptions, the accurate calculation of non-member spouse entitlements and the provision of relevant information by superannuation trustees.

Targeted consultation was also undertaken with other key government stakeholders in 2022 and 2023 to inform the development of the exposure draft regulations which were released for public consultation from 14 March 2024 to 26 April 2024. Feedback was received from family law practitioners, superannuation trustees, superannuation actuaries, financial professionals and accountants, and superannuation industry peak bodies.

Feedback was generally supportive, and stakeholders provided helpful technical suggestions which have been addressed in the 2025 Regulations.

The exposure draft regulations did not include certain valuation factors. This was on the basis it would not have been appropriate to publish that information so far in advance of their commencement as it may have influenced the behaviour of separated parties seeking to resolve their family law dispute. A separated party could have sought to delay or expedite their family law process, depending on whether they may benefit from the new methodology used to determine the family law value of their superannuation interest, once made into law.

Superannuation trustees expressed the need for adequate time to prepare and implement their valuation methodology ahead of the commencement of the 2025 Regulations. To support this, the Attorney-General's Department, with the Attorney-General's approval, provided the actuaries and trustees of defined benefit superannuation funds with early access to the actuarial assumptions to support this preparation.

IMPACT ANALYSIS

The Office of Impact Analysis has confirmed that no impact analysis is required (OIA23-06030).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues. A Statement of Compatibility with Human Rights is set out in **Attachment A**.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the instrument are set out in **Attachment B**.

COMPARISON TABLE OF PROVISIONS

A table providing a comparison of the provision numbers between the 2001 Regulations and the 2025 Regulations is at **Attachment C**.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Family Law (Superannuation) Regulations 2025

1. This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

2. The Family Law (Superannuation) Regulations 2025 (2025 Regulations) repeal and replace the Family Law (Superannuation) Regulations 2001 (2021 Regulations) that are due to sunset on 1 April 2025.
3. The superannuation splitting framework under the 2025 Regulations remains substantially the same as the framework under the current regulations.
4. However, the 2025 Regulations contain a number of changes that clarify provisions and ensure that superannuation splitting arrangements keep pace with developments in superannuation products and with broader superannuation policy.
5. The *Family Law Act 1975* (Family Law Act) provides for the alteration of property interests between separating couples. Parts VIII B and VIII C of the Family Law Act give family law courts the power to deal with the superannuation interests of these parties. Parts VIII B and VIII C also operate to provide the framework for:
 - superannuation splitting orders, which are orders made by the court to divide, or ‘split’, the payments arising from superannuation interests of a person, and
 - superannuation agreements, which are a type of financial agreement in which parties can agree about how superannuation is to be split following relationship breakdown.
6. The 2025 Regulations have been prescribed to give effect to the distribution of superannuation interests under Parts VIII B and VIII C of the Family Law Act.
7. Specifically, the 2025 Regulations support the operation of Parts VIII B and VIII C by prescribing:
 - the methods (actuarial formulas) and factors (tables of numbers based on different mortality rates, benefit entitlements, ages of retirement) for valuing superannuation interests
 - the way in which superannuation payment flags and splits are to be put into effect, and
 - the information that trustees must provide to parties to family law property proceedings, and to couples seeking to negotiate a superannuation agreement.

Human rights implications

8. The 2025 Regulations engage the following rights:

- Rights of equality and non-discrimination: Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Articles 2, 3, 5 and 16 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).
- Right to privacy and reputation: Article 17(1) of the ICCPR.
- Right to a fair trial and fair hearing: Article 14(1) of the ICCPR.
- Right to minimum guarantees in criminal proceedings: Article 14(3) of the ICCPR.
- Right to respect for the family during marriage and at its dissolution: Articles 17(1) and 23 of the ICCPR.
- Right to protection from exploitation, violence and abuse: Article 20(2) of the ICCPR and Article 16(1) of the *Convention on the Rights of Persons with Disabilities* (CRPD).
- Right to an adequate standard of living, including food, water and housing: Article 11(1) of the ICESCR.

Rights of equality and non-discrimination: Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and Articles 2, 3, 5 and 16 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

9. Article 26 of the ICCPR provides that, in part, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, and that the law shall guarantee effective protection against discrimination on any ground, including sex.
10. The CEDAW provides key principles of equality which cover many aspects of women's lives, including marriage, family relations, and equality before the law. In particular:
 - Article 2 provides that parties agree to pursue the elimination of discrimination against women, including by introducing new laws or policies, changing existing discriminatory laws and providing sanctions for discrimination, where appropriate.
 - Article 3 requires parties to take appropriate measures to ensure women's full development and advancement, so that they can enjoy human rights and fundamental freedoms on the same basis as men.
 - Article 5 requires parties to take appropriate measures to modify the social and cultural patterns of conduct of men and women, to eliminate prejudices based on the idea of inferiority or superiority of either of the sexes.
 - Article 16 provides that parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

Superannuation splitting framework

11. As a whole, the 2025 Regulations promote these rights by supporting the effectiveness of the superannuation splitting and family law framework. The 2025 Regulations set out the processes for requesting information about a superannuation interest, valuing the interest, and setting out the steps trustees must follow to split benefits arising from a superannuation interest subject to a superannuation splitting order or agreement. This supports the overarching principle underpinning the Family Law Act in relation to property settlements to provide for a just and equitable outcome for parties.
12. The ability to split superannuation interests between separating parties promotes equality between men and women before the law in property proceedings, by enabling the re-distribution of property of the relationship following separation, including superannuation. It promotes the obligation in Article 16(h) of CEDAW to ensure the same rights for both parties in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for valuable consideration.

Actuarial methods and factors for valuing superannuation interests

13. The 2025 Regulations provide the basis to calculate a reasonable estimate of the value of a superannuation interest to assist separating parties and the court during property settlement negotiations. Where court orders are sought, the court must undertake valuation of a superannuation interest in accordance with the 2025 Regulations.
14. For certain superannuation interests (such as defined benefit interests), the 2025 Regulations prescribe methods (actuarial formulas) and factors (tables of numbers based on economic and demographic assumptions) which are used to produce a value for an interest.
15. The valuation factors in the 2025 Regulations differ based on age and sex. This is in recognition of the different mortality rates between males and females and the different retirement experiences of people at different ages. For example, females tend to live longer and so are likely to receive lifetime superannuation benefits for a longer period of time. These differences affect the estimated value of certain superannuation interests and if they are not accounted for, the reasonableness of these estimations will be impacted.
16. The UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.
17. The rights of equality and non-discrimination are limited in the 2025 Regulations to ensure the reasonable and fair estimation of all individuals' superannuation interests regardless of age or sex. The differentiating factors are necessary to account for the variations in assumptions related to each cohort. This ultimately promotes the rights of equality and non-discrimination by enabling the reasonable valuation of property in a family law property settlement which supports just and equitable outcomes for separating parties resolving their respective rights of ownership of property of the relationship.

Right to privacy and reputation: Article 17(1) of the ICCPR.

18. Article 17(1) of the ICCPR protects individuals from arbitrary or unlawful interference with their privacy, family, home or correspondence. The right to protection against arbitrary and unlawful interference protects personal information.
19. A number of measures in the 2025 Regulations engage the prohibition on interference with privacy and attacks on reputation.

Requirement for trustees to provide information

20. The 2025 Regulations require superannuation trustees to provide an eligible person (an applicant who makes a valid application under sections 90XZB or 90YZR of the Family Law Act) certain information about a member's superannuation interest. The member could be the applicant themselves, or the member's partner or former partner.
21. The information a trustee must provide is set out in Part 9 of the 2025 Regulations and prescribes the range of information required for different types of superannuation interests. This information can include: the member's date of birth, the date the member first became a member of the superannuation plan, the amount of annual pension benefit payable to the member, and the member's eligibility to receive a lump sum payment.
22. The obligation on a trustee to disclose personal information about a person is not arbitrary. Information can only be provided after the applicant signs a declaration confirming they require the information either to assist them to properly negotiate a superannuation agreement, or to assist them in connection with the operation of Part VIIB or VIIC of the Family Law Act.
23. The sharing of this information facilitates the expeditious, just and equitable resolution of the property and financial aspects (including superannuation interests) of a relationship breakdown. To the extent the 2025 Regulations limit the right to be free from interference with privacy, this is reasonable, necessary and proportionate to ensure that both parties have the information necessary to engage in a just and equitable property division process.

Requirement for non-member spouse to provide information to trustee

24. Section 144 of the 2025 Regulations requires a 'non-member spouse' in relation to a superannuation interest (that is, the person in whose favour superannuation splitting arrangements have been made) to provide certain information (including their full name, date of birth and contact details) to a trustee after the service of a superannuation agreement or order.
25. This information is necessary to effectively implement a payment split or payment flag and enables a trustee to comply with their obligations pursuant to a superannuation agreement or order. When a benefit from a superannuation interest is payable to the member spouse, a certain amount will be paid to the non-member spouse – this is a payment split. A payment flag prevents the trustee of the superannuation fund from making any payments out of the interest until the flag has been lifted.
26. While this provision may be considered as limiting the right to privacy and reputation, the limitation is necessary to support the practical operation of a payment split or flag. Additionally, the 2025 Regulations seek to provide flexibility and choice in the

information a non-member spouse may choose to provide to a trustee. For example, the non-member spouse may provide an email address instead of a postal address, or to protect their own personal information, they may choose to provide the email or postal address of a representative. This reduces the limitation on the right to privacy and reputation to the extent it only requires information that is necessary for the superannuation splitting framework to operate effectively.

Right to a fair trial and fair hearing and right to minimum guarantees in criminal proceedings: Articles 14(1) and 14 (3) of the ICCPR.

27. Article 14(1) of the ICCPR provides that all persons are equal before courts and tribunals. It further provides that everyone is entitled, in the determination of ‘rights and obligations in a suit of law’, to a ‘fair and public hearing by a competent, independent and impartial tribunal established by law’. The right to a fair hearing applies in both criminal and civil proceedings, including whenever rights and obligations are to be determined.
28. Article 14(3) of the ICCPR establishes a number of guarantees that must be observed in criminal proceedings, including:
 - to be tried without undue delay - Article 14(3)(c), and
 - to cross-examine prosecution witnesses and to obtain the attendance and examination of witnesses on behalf of the accused on the same conditions as the prosecution - Article 14(3)(e).
29. The 2025 Regulations engage these rights through section 143, which attracts 1 penalty unit for contravention of a trustee’s obligation to provide certain information to a non-member spouse at the end of each financial year. These rights are also engaged through the use of evidentiary certificates in section 140 which states that information provided by a trustee in a document to an applicant is prima facie evidence of the information stated in it, and that the document was provided to the applicant.
30. Evidentiary certificates have the potential to affect the fairness of a trial (Article 14(1)) and the right to cross-examine witnesses (Article 14(3)) in a criminal trial by providing a process through which evidence can be adduced by a third party without needing to appear in court. However, the evidentiary certificates permitted under section 140 are only prima facie evidence of the matters stated in it and can be disputed, allowing opportunity for evidence of contrary matters to be adduced.
31. This upholds the right to a fair trial and fair hearing whilst ensuring proceedings are carried out efficiently and without delay.
32. No other provision in the Regulations limit the minimum guarantees in criminal proceedings outlined above. Therefore, overall, the 2025 Regulations support the right to a fair trial and hearing, and upholds the right to minimum guarantees in criminal proceedings.

Right to respect for the family during marriage and at its dissolution: Articles 17(1) and 23 of the ICCPR.

33. Article 23(4) of the ICCPR imposes an obligation on states to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during

marriage and at its dissolution. In the case of dissolution of marriage, provisions shall be made for the necessary protection of any children.

34. The 2025 Regulations promote this obligation by supporting the broader framework for separating couples to achieve a property settlement and provide certainty that all relevant property of a relationship (including superannuation) can be taken into consideration as part of a property settlement. The 2025 Regulations facilitate the valuation, information sharing and splitting of benefits related to superannuation interests which enables just and equitable family law property division.
35. Further, section 17 of the Regulations ensures that where a member has died and a superannuation payment is being made to a dependent child as a reversionary beneficiary, these payments are not splittable. This means that the non-member spouse will not be able to receive any portion of these superannuation benefits as part of a superannuation split. This promotes the protection of children during marriage and at its dissolution and ensures children are financially provided for where possible.

Right to protection from exploitation, violence and abuse: Article 20(2) of the ICCPR and Article 16(1) of the *Convention on the Rights of Persons with Disabilities* (CRPD).

36. Article 20(2) of the ICCPR provides an obligation on states to take measures to protect persons from exploitation, violence and abuse, including by prohibiting discrimination, which includes gender-based discrimination.
37. Article 16(1) of the CRPD provides that states shall take measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
38. The 2025 Regulations promote these rights by ensuring parties have equal access to relevant information about superannuation interests through the operation of Part 9. This supports the equal participation of parties in property settlement negotiations or legal proceedings.
39. The flexibility in section 144 for a non-member spouse to withhold their personal details and provide an intermediary's contact details is also designed to protect persons from exploitation, violence and abuse.

Right to an adequate standard of living, including food, water and housing: Article 11(1) of the ICESCR.

40. Article 11(1) of the ICESCR provides that all persons have the right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. The 2025 Regulations promote this right for married and de facto couples, and their dependent children, in family law property proceedings by supporting the just and equitable division of superannuation between couples following their separation.
41. The 2025 Regulations support the operation of the broader family law property settlement framework which recognises the right of everyone to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement in their living conditions, including via the alteration of property rights between separating couples.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the Regulations under the Family Law Act.

GLOSSARY

| Abbreviation | Definition |
|----------------------------------|---|
| AIA | <i>Acts Interpretation Act 1901</i> |
| Corporations Act | <i>Corporations Act 2001</i> |
| Corporations Regulations | Corporations Regulations 2001 |
| Family Law Act | <i>Family Law Act 1975</i> |
| FCFCOA Act | <i>Federal Circuit and Family Court of Australia Act 2021</i> |
| ITAA | <i>Income Tax Assessment Act 1997</i> |
| ITAA Regulations | Income Tax Assessment (1997 Act) Regulations 2021 |
| 2001 Regulations | Family Law (Superannuation) Regulations 2001 |
| 2025 Regulations | Family Law (Superannuation) Regulations 2025 |
| RSA Act | <i>Retirement Savings Account Act 1997</i> |
| RSA Regulations | Retirement Savings Account Regulations 1997 |
| SIS Act | <i>Superannuation Industry (Supervision) Act 1993</i> |
| SIS Regulations | Superannuation Industry (Supervision) Regulations 1994 |
| Small Super Accounts Act | <i>Small Superannuation Accounts Act 1995</i> |
| Small Super Accounts Regulations | Small Superannuation Accounts Regulations 2018 |

FAMILY LAW DEFINITIONS IN THE FAMILY LAW ACT

Sections 90XD and 90YD of the Family Law Act define terms in relation to superannuation splitting that are used in the Family Law (Superannuation) Regulations 2025 (2025 Regulations). Many of these defined terms are outlined below for ease of reference but do not entirely replicate the definitions in the Family Law Act. As such, readers of this material, should not solely rely upon the descriptions below and should refer to the definitions in the Family Law Act, many of which refer to other provisions within the Act or other Commonwealth legislation.

Where the terms below or any other defined term in the 2025 Regulations appear in this Explanatory Statement, they have been *italicised* for ease of identification.

Approved deposit fund has the same meaning as in the SIS Act. Subsection 10(1) of the SIS Act defines this to mean a fund that is an indefinitely continuing fund, maintained by an ‘RSE licensee’ that is a constitutional corporation, and is maintained solely for approved purposes. An ‘RSE licensee’ is a constitutional corporation, body corporate, or group of individual *trustees*, that holds a registrable superannuation entity license that is provided under the provisions in Part 2A of the SIS Act.

Eligible superannuation plan means any of the following:

- a *superannuation fund* within the meaning of the SIS Act. Subsection 10(1) of the SIS Act defines this to mean either a *public sector superannuation scheme*, or a fund that is an indefinitely continuing fund that is a provident, benefit, superannuation or retirement fund
- an *approved deposit fund*
- a retirement savings account. The RSA Act and RSA Regulations provide the legal framework for these accounts
- an account within the meaning of the Small Super Accounts Act. The Small Super Accounts Act establishes the legal framework for the treatment of *superannuation interests* with a value below a certain threshold. These interests may be transferred to the Australian Taxation Office for management by the Commissioner of Taxation under the framework
- a *superannuation annuity* (within the meaning of the ITAA).

Flagging order means an order mentioned in subsection 90XU(1) or 9YZ(1) of the Family Law Act. These sections set out the requirements for making an order directing a *trustee* not to make any *splittable payment* to any person in respect of the interest without the leave of the court, and requiring the *trustee* to notify the parties of the next occasion when a *splittable payment* becomes payable in respect of the order.

Flag lifting agreement has the meaning given by section 90XN or 90YS of the Family Law Act. These sections provide that at any time a *payment flag* is operating on a *superannuation interest*, the spouses may make an agreement that either a *payment flag* is to cease operating without any *payment split*, or that specifies an amount, method or percentage in accordance with subsection 90XJ(1) or 90YY(1) of the Family Law Act.

In force, in relation to a financial agreement, a superannuation agreement or a *flag lifting agreement*, has the meaning in section 90XG or 90YJ of the Family Law Act. These sections set out the other provisions of the Family Law Act that must be complied with for an agreement to be considered *in force*, as follows:

- A Part VIIIA financial agreement is *in force* at any time when it is binding on the parties in accordance with section 90G.
- A Part VIIIAB financial agreement is *in force* at any time when it is binding on the parties in accordance with section 90UJ.
- A superannuation agreement is *in force* at any time when the relevant financial agreement or relevant Part VIIIAB financial agreement is *in force*, or relevant Western Australian financial agreement is binding on the parties in accordance with the *Family Court Act 1997* (WA).

- A *flag lifting agreement* is *in force* if it meets the requirements in subsection 90XN(3) or 90YS(3), and it has not been set aside by a court and has not been terminated.

Marriage includes a void marriage.

Member, in relation to an *eligible superannuation plan*, includes a beneficiary, including a contingent or prospective beneficiary.

Member spouse means, in relation to a *superannuation interest*, the spouse who has the *superannuation interest*.

Non-member spouse means, in relation to a *superannuation interest*, the spouse who is not the member spouse in relation to that interest.

Operative time means:

- for a *payment split* under a superannuation agreement or *flag lifting agreement*, the meaning in section 90XI or 90YM of the Family Law Act. These sections provide that *operative time* for a *payment split* under such an agreement is the fourth business day after the day the agreement is served on the *trustee*.
- for a *payment flag* under a superannuation agreement, the meaning in section 90XK or 90YO, or paragraphs 90XLA(2)(c) or 90YQ(2)(c) of the Family Law Act. Sections 90XK and 90YO provide that the *operative time* for a *payment flag* under an agreement is the fourth business day after the day on which the agreement is served on a *trustee* of the *superannuation fund*, unless the *eligible superannuation plan* is a *self managed superannuation fund*, in which case the *operative time* is service time. Paragraphs 90XLA(2)(c) and 90YQ(2)(c) provide for arrangements where a successor fund transfer has occurred.
- for a *payment split* under a *splitting order*, the time specified in the order.

Payment flag means the application of section 90XL or 90YP of the Family Law Act in relation to a *superannuation interest*, or the application of a *flagging order* in relation to a *superannuation interest*. Sections 90XL and 90YP provide the framework for placing a flag by agreement on *splittable payments* that become payable from a *superannuation interest*, which prevents a *trustee* from making any *splittable payment* to any person in respect of the interest.

Payment split means the application of section 90XJ or 90YN of the Family Law Act to a *superannuation interest*, or the application of a *splitting order* in relation to *splittable payment*. Sections 90XJ and 90YN provide the framework for splitting superannuation payments using a superannuation agreement or *flag lifting agreement*.

Regulated superannuation fund has the same meaning as in the SIS Act. Section 19 of the SIS Act provides the framework that permits a *trustee* to elect to have the SIS Act apply in relation to its fund.

Reversionary beneficiary means a person who becomes entitled to a benefit in respect of a *superannuation interest* of a spouse, after the spouse dies.

RSA means a retirement savings account within the meaning of the RSA Act.

Secondary government trustee means a *trustee* that is the Commonwealth, a State or Territory, and is a *trustee* only because of the operation of section 90XDA or 90YF of the Family Law Act. These sections operate to extend the meaning of *trustee* to a person who is

not the *trustee* of an *eligible superannuation plan*, but who nevertheless has the power to make payments to members of the plan.

Splittable payment has the meaning provided by section 90XE or 90YG of the Family Law Act. These sections identify categories of payments from a *superannuation interest* that may be made to the spouse, to another person for the benefit of the spouse, the legal personal representative of the spouse after the death of the spouse, and a *reversionary beneficiary* or their legal personal representative, after the death of the spouse. However, Parts 2 and 3 of the 2025 Regulations provides that some payments from a *superannuation interest* are not *splittable payments*. However, Parts 2 and 3 of the 2025 Regulations provide that some payments from a *superannuation interest* are not *splittable payments*.

Splitting order means an order mentioned in subsection 90XT(1) or 90YY(1) of the Family Law Act. These sections set out the requirements for splitting superannuation payments by court order under the Family Law Act.

Spouse means a party to a marriage or de facto relationship.

Superannuation agreement has the meaning provided in section 90XH, 90XHA or 90YK of the Family Law Act. These sections provide that a superannuation agreement that deals with *superannuation interests* of either or both of the spouses to the relationship can be included as part of a financial agreement.

Superannuation interest means an interest that a person has as a member of an *eligible superannuation plan* but does not include a reversionary interest.

Trustee means, in relation to an *eligible superannuation plan*:

- when the plan is a fund that has a *trustee* (within the ordinary meaning of the word) - that *trustee*
- if the Regulations identify a person as a *trustee* of the plan for the purposes of the definition - that person
- otherwise, the person who manages the plan.

Details of the proposed *Family Law (Superannuation) Regulations 2025*

Part 1—Preliminary

Section 1 – Name

1. This section declares the title of this instrument is the Family Law (Superannuation) Regulations 2025 (the 2025 Regulations). This section provides the title of this instrument is the Family Law (Superannuation) Regulations 2025 (the 2025 Regulations).

Section 2 – Commencement

2. This section provides for the 2025 Regulations to commence on 1 April 2025. This section provides for the 2025 Regulations to commence on 1 April 2025.

Section 3 – Authority

3. This section provides that the 2025 Regulations are made under the *Family Law Act 1975* (the Family Law Act).

Section 4 – Definitions

4. This section provides definitions for expressions used in the 2025 Regulations that are not otherwise defined in the Family Law Act.
5. Paragraph 13(1)(b) of the *Legislation Act 2003* indicates that expressions used in an instrument have the same meaning as in the enabling legislation as *in force* from time to time.
6. The legislative note to section 4 directs the reader to Part VIII B and Part VIII C of the Family Law Act, where a number of terms used in the 2025 Regulations are defined. The note provides the following examples of such terms: *eligible superannuation plan, member spouse, non-member spouse, operative time, payment flag, payment split* and *superannuation interest*.
7. Section 4 provides the following definitions:

Accumulation interest means a *superannuation interest*, or a component of a *superannuation interest*, that is not a *defined benefit interest* or a *small superannuation accounts interest*. The expression *superannuation interest* is defined in the Family Law Act and included above in ‘Family Law Definitions in the Family Law Act’. The reference to ‘*component of a superannuation interest*’ is in recognition of the fact that a *superannuation interest* may have two or more *components*, one of which may be considered to be an *accumulation interest*, while another may be considered to be a *defined benefit interest*.

Act means the Family Law Act.

Adjusted base amount applicable to the non-member spouse has the meaning in section 73 of the 2025 Regulations. That section provides how to adjust the base amount for the *non-member spouse* to calculate the adjusted base amount that applies to the *non-member spouse* on a specific date.

Allocated annuity means an annuity that is paid, within a range of minimum and maximum payments, from an identifiable lump sum. It includes an annuity under a contract that meets the standards set out in subregulation 1.05(4) of the SIS Regulations.

Allocated pension means a pension that is paid, within a range of minimum and maximum payments, from an identifiable lump sum. It includes a pension provided under rules of a *superannuation fund* that meet the standards of subregulation 1.06(4) of the SIS Regulations, and a pension provided under the terms and conditions of an *RSA* that meet the standards of subregulation 1.07(2) of the RSA Regulations.

Annuity provider means a person, body or organisation that has entered into a contract to provide an annuity.

Applicable adjustment period means, for a *superannuation interest*, the relevant adjustment period set out at section 74 or 75 of the 2025 Regulations. These sections provide the periods of time in which a *trustee* need to adjust the *base amount* allocated to the *non-member spouse* in relation to a *superannuation interest*, in order to calculate the *adjusted base amount applicable to the non-member spouse*.

Base amount means the monetary amount (rounded up or down to the nearest dollar, with 50 cents being rounded up) identified in a superannuation agreement or *flag lifting agreement* made under subparagraph 90XJ(1)(c)(i) or (ii), or subparagraph 90YN(1)(c)(i) or (ii) of the Family Law Act, or allocated to the *non-member spouse* by the court in a *splitting order* made under subsection 90XT(4) or 90YY(5) of the Family Law Act.

This definition is similar to the definition of ‘*base amount* allocated to the *non-member spouse*’ in regulation 45 of the 2001 Regulations. The defined term ‘*base amount* allocated to the *non-member spouse*’ remains in Part 7 of the 2025 Proposed 2025 Regulations, as this has the effect of deeming all *base amounts* (even those that are ‘specified’ in an agreement) as being ‘allocated’ to the *non-member spouse* for the purposes of calculating their entitlement.

Component of a *superannuation interest* has the meaning provided at section 5 of the 2025 Regulations.

Constitutionally protected fund has the meaning provided in subsection 995-1(1) of the ITAA.

Subsection 995-1(1) of the ITAA provides that a *constitutionally protected fund* is a fund that is declared by the regulations to be a *constitutionally protected fund*. Regulation 995-1.03 of the ITAA Regulations provides a list of state and territory laws that establish *constitutionally protected funds*. The majority of such funds relate to state and territory judges’ pensions, and to superannuation arrangements for state and territory public sector employees.

Deferred annuity means an annuity that is not presently payable.

Defined benefit interest has the meaning provided in section 6 of the 2025 Regulations.

Exempt public sector superannuation scheme has the same meaning as in the SIS Act.

Subsection 10(1) of the SIS Act defines this term to mean a *public sector superannuation scheme* that is specified in the SIS Regulations as made for the purposes of that definition. Schedule 1AA of the SIS Regulations specifies the schemes, or where relevant, the legislation that establishes the schemes, that are *exempt public sector superannuation schemes*. These schemes provide superannuation arrangements for state, territory and Commonwealth public sector employees.

Fixed term annuity means an annuity that is not a *market linked annuity* and is paid for a fixed period.

Growth phase in relation to a *superannuation interest* of a *member spouse* that is not a *small superannuation accounts interest*, or a *component* of such an interest, has the meaning given by sections 7 and 8 of the 2025 Regulations.

Innovative superannuation interest means a *superannuation interest*, or a *component* of such an interest, where all benefits are provided under a contract that meets the standards of subregulation 1.06A(2) of the SIS Regulations, or under the governing rules of an *eligible superannuation plan* where those rules meet the standards of subregulation 1.06A(2) of the SIS Regulations.

Innovative *superannuation interests* are a category of lifetime superannuation products established under regulation 1.06A of the SIS Regulations. They are a recent type of product aimed to provide consumers with greater choice and flexibility in retirement product options. They cover a range of lifetime products that did not meet the annuity and pension standards prior to 1 July 2017. Benefits with respect to an *innovative superannuation interest* may take the form of either a pension or annuity payments.

Judges' Pensions Act Scheme means the scheme constituted by the *Judges' Pensions Act 1968* for the provision of retirement and other benefits to and in respect of Judges, within the meaning of that Act.

Lifetime pension means a benefit in respect of a *superannuation interest* in an eligible superannuation plan, or a *component* of such an interest, that is payable as a pension for the life of the *member spouse*. A legislative note under this definition directs the reader to section 15 of the 2025 Regulations, which affects this meaning.

Market linked annuity means an annuity that is not an *allocated annuity* that is paid from an identifiable lump sum, and arises under a contract that meets the standards in subregulation 1.05(10) of the SIS Regulations.

Market linked pension means a pension, other than an *allocated pension*, paid from an identifiable lump sum that meets the standards in subregulation 1.06(8) of the SIS Regulations or subregulation 1.07(3A) of the RSA Regulations.

Member information statement means, for a member of an *eligible superannuation plan*, a statement issued periodically to the member by the *trustee* of the plan. The statement provides information about the value of the member's *superannuation interest* in the plan at a specific date.

Member's retirement age means, for a member with a *defined benefit interest* in an *eligible superannuation plan*, the latest retirement age for the member that is specified in the governing rules of the plan. However, if the governing rules provide that the latest retirement age is more than 65 years, or there is no retirement age specified, the definition specifies that 65 years is the applicable retirement age. The Minister may also approve a specific retirement age for members of a defined benefit plan under section 52 of the 2025 Regulations, in which case the definition specifies that age as the *member's retirement age*. A legislative note under this definition directs the reader to subsection 52(5) of the 2025 Regulations.

Net earnings has the meaning provided in regulation 7.9.01 of the Corporations Regulations. That definition applies to a *superannuation interest* in a *regulated superannuation fund*, *approved deposit fund* or *RSA* to which the financial product disclosure provisions in Part 7.9 in the Corporations Regulations apply.

Partially vested accumulation interest has the meaning provided by section 10 of the 2025 Regulations.

Payment phase for a *superannuation interest* that is not a *small superannuation accounts interest*, or a *component* of such an interest, has the meaning provided by section 9 of the 2025 Regulations.

Pension means a pension, within the meaning of section 10 of the SIS Act, payable from an *eligible superannuation plan*, other than an account within the meaning of the Small Super Accounts Act.

Percentage-only interest has the meaning provided by section 11 of the 2025 Regulations.

Public sector superannuation scheme has the same meaning as in the SIS Act.

Subsection 10(1) of the SIS Act defines this term to mean a scheme for the payment of superannuation, retirement or death benefits that is established under a law of the Commonwealth, state, territory or a local governing body or public authority that is constituted under a law of the Commonwealth or of a state or territory.

Relevant condition of release has the meaning provided by section 19 of the 2025 Regulations.

Relevant date, for the purposes of determining the value of a *superannuation interest* that is subject to a payment split under Part 6, means:

- (a) when the payment split is for a superannuation agreement or *flag lifting agreement*, the date the parties agree to in the agreement, or where no date is agreed by the parties and the agreement is dated, the date shown on the agreement. If no date is agreed by the parties and the agreement is not dated, the ‘relevant date’ is the date when the agreement is served on the *trustee* of the relevant superannuation plan for the interest.
- (b) when the payment split is for a *splitting order*, the date determined by the court in the order.

This definition supports the court in determining the value of an interest, which they must do, before making a *splitting order* under subsection 90XT(2) or 90YY(2) of the Family Law Act. A legislative note under this definition states that, while Part 6 of the 2025 Regulations does not expressly apply to *payment splits* under a superannuation agreement or *flag lifting agreement*, the parties may nevertheless agree to use the methods in Part 6 to determine an amount for the *superannuation interest*, in which case paragraph (a) of this definition will apply.

RSA Regulations means the Retirement Savings Account Regulations 1997.

Self managed superannuation fund has the same meaning as in the SIS Act.

Section 17A of the SIS Act sets out the conditions under which a *superannuation fund* is a *self managed superannuation fund*. Section 17B of the SIS Act provides that, in particular circumstances, certain provisions within section 17A do not apply. Those provisions are in relation to the remuneration of *trustees*.

SIS Regulations means the Superannuation Industry (Supervision) Regulations 1994.

Small superannuation accounts interest means a *superannuation interest* in an account within the meaning of the Small Super Accounts Act.

Superannuation annuity has the meaning given by subsection 995-1(1) of the ITAA.

Superannuation contributions surcharge or surcharge means the tax imposed by the *Superannuation Contributions Tax Imposition Act 1997*.

Superannuation fund has the same meaning as in the SIS Act.

Subsection 10(1) of the SIS Act defines the term to mean an indefinitely continuing fund that is a provident, benefit, superannuation or retirement fund or a *public sector superannuation scheme*.

Unflaggable interest has the meaning provided in section 13 of the 2025 Regulations.

Unsplittable interest has the meaning provided in section 14 of the 2025 Regulations.

Value of the non-member spouse's entitlement has the meaning given by section 25, 29, 32 or 35 of the 2025 Regulations, as applicable in the circumstances.

Withdrawal benefit provides that:

- for a member of a *regulated superannuation fund*, an *exempt public sector superannuation scheme* or an *approved deposit fund*, has the meaning given by subregulation 1.03(1) of the SIS Regulations
- for a member of an *RSA*, has the meaning given by subregulation 1.03(1) of the RSA Regulations
- for a member who has a *small superannuation accounts interest* under the *RSA Act*, means the balance of the member's account
- for a member of any other *eligible superannuation plan*, means the total amount of benefits that is payable to the member if the member voluntarily ceased to be a member of the plan.

Section 5 – Meaning of *component of a superannuation interest*

8. Section 5 provides a definition for the term *component of a superannuation interest*.
9. Subsection 5(1) provides that a *component of a superannuation interest* is a part of a *superannuation interest* that a person has as a member of an *eligible superannuation plan*, if the part:
 - has distinct features and characteristics
 - has requirements that must be met before a benefit in respect of the part becomes payable, and
 - does not make up the entire *superannuation interest*.
10. Subsection 5(2) provides that a benefit payable in respect of a *superannuation interest* or a *component of the superannuation interest* is not itself a *component of the superannuation interest*.
11. The definition in this section provides that consideration of what a *component of a superannuation interest* is for the purposes of the Family Law Act and the 2025 Regulations must be undertaken with regard to the features and characteristics

of the constituent part of the interest that, as stated in the legislative note under subsection 5(2), gives rise, or may give rise, to an entitlement to any benefits, and to the requirements that must be met before a benefit becomes payable, rather than with regard to the benefits themselves. Two examples under the legislative note set out circumstances in which a *superannuation interest* has multiple *components*, to help clarify this definition.

12. Subsection 5(3) provides that subsections 5(1) and (2) in the definition apply despite any other law. This operates to distinguish the definition of *component* under the 2025 Regulations with the use of ‘*component*’ in other legislation for other purposes relating to *superannuation interests*.
13. This definition provides greater clarity as to what is meant by a *component* of a *superannuation interest* for the purpose of the 2025 Regulations.
14. This definition addresses the issue that arose in the case of *Campbell v Superannuation Complaints Tribunal* [2016] FCA 808 (15 July 2016), in which the term *defined benefit interest* in regulation 5 of the 2001 Regulations (which is defined at section 6 of the 2025 Regulations) was interpreted narrowly due to the interpretation of the term ‘*component*’.
15. In that case, the court concluded that an invalidity benefit entitlement was a *component* of a *superannuation interest*, and as it was only payable on death or invalidity, that the *component* was not a *defined benefit interest* under the 2001 Regulations. The court subsequently concluded, in accordance with regulation 3 of the 2001 Regulations that defined an *accumulation interest* as any interest that is not a *defined benefit interest* or a *small superannuation accounts interest*, that the invalidity *pension* in question was an *accumulation interest*, despite the *pension* having no feature that could properly be regarded as representative of an *accumulation interest*.
16. The correct characterisation of a *component* of an interest is important as this gives rise to particular requirements for the valuation of the interest as set out in Part 6 of the 2025 Regulations and for the provision of information in relation to the interest under Part 9 of the 2025 Regulations.

Section 6 – Meaning of *defined benefit interest*

17. Section 6 provides for the meaning of *defined benefit interest* for the 2025 Regulations.
18. Paragraphs 6(1)(a) and (b) provide that a *defined benefit interest* is a *superannuation interest*, or a *component* of a *superannuation interest*, in respect of which any benefits payable are defined by reference to the amounts or factors set out in subsection 5(3).
19. Paragraphs 6(1)(c) and (d) prescribe two specific interests as *defined benefit interests*.
20. Paragraph 6(1)(c) prescribes a *superannuation interest* that a *member spouse* has in the scheme provided for by the *Australian Defence Force Cover Act 2015* (ADF Cover Scheme) and that is in the *payment phase*, as a *defined benefit interest*.
21. The ADF Cover Scheme provides automatic death and invalidity cover for eligible Australian Defence Force (ADF) personnel. The scheme is not an *accumulation scheme*, as the benefit is not ‘accumulated’ over time having regard to, for example,

a rate of interest or earnings. A member's *superannuation interest* in the ADF Cover Scheme does not exist unless or until a member claims invalidity, and at that point, their benefit is calculated in accordance with defined benefit factors and paid out as a *lifetime pension*. This arrangement is intended to be consistent with *invalidity pensions* which are payable in respect of the employer *component* (defined benefit *component*) from the Military Superannuation and Benefits Scheme (MSBS) and Defence Forces Retirement and Death Benefits Scheme (DFRDB), for the life of the beneficiary.

22. However, absent the operation of paragraph 6(1)(c), an interest in the ADF Cover Scheme does not meet the definition of *defined benefit interest* in section 6, as benefits in respect of a *superannuation interest* in the ADF Cover Scheme, while they are calculated by reference to the defined benefit factors in subsection 6(3), are only payable on death or invalidity.
23. Prescribing an interest in the ADF Cover Scheme as a *defined benefit interest* ensures that when the *trustee* is required to provide information about the interest, that information will be provided in accordance with Subdivision B, Division 3 of Part 9 of the 2025 Regulations (Information about certain *defined benefit interests*). This will ensure that the information provided by the *trustee* about the interest will be relevant and accurate for the purpose of valuing the *superannuation interest* for family law superannuation splitting.
24. Paragraph 6(1)(d) prescribes a *superannuation interest* that a *member spouse* has in the scheme provided for by Division 3 of Part 1 of Chapter 4 of the FCFCOA Act and which is in the *payment phase*, as a *defined benefit interest*.
25. Division 3 of Part 1 of Chapter 4 of the FCFCOA Act provides for the disability and death benefits of Division 2 judges of the Federal Circuit and Family Court of Australia. These benefits are only payable upon retirement on grounds of invalidity, and only payable as a *pension* for a fixed period. Without the operation of paragraph 6(1)(d), an interest in this scheme does not meet the definition of *defined benefit interest* under section 6 and would be classified as an accumulation scheme. Similar to the ADF Cover Scheme, classification as an accumulation fund does not accurately reflect the nature of the interest, as it does not accumulate over time, and can only be paid to the *member spouse* as a *pension* upon invalidity.
26. Prescribing an interest in the scheme provided for by Division 3 of Part 1 of Chapter 4 of the FCFCOA Act ensures that when the *trustee* is required to provide information about the interest, that information will be provided in accordance with Subdivision B, Division 3 of Part 9 of the 2025 Regulations (Information about certain *defined benefit interests*). This ensures that the information provided by the *trustee* about the interest is relevant and accurate for the purpose of valuing the *superannuation interest* for family law superannuation splitting.
27. Subsection 6(2) qualifies that an interest is not a *defined benefit interest* if the only benefits payable in respect of the interest or *component* that are defined by reference to one or more of the amounts or factors mentioned in subsection 6(3) are benefits payable on death or invalidity and there are no other circumstances in which benefits payable in respect of the interest or *component* are, or could have been, defined by reference to the amounts or factors mentioned in subsection 6(3).

28. Subsection 6(2) is to operate to exclude some interests which are properly regarded as *accumulation interests* from being classified as *defined benefit interests* merely because they have a conditional benefit payable on death or invalidity which is determined by reference to defined benefit factors. That is, subsection 6(2) excludes a scheme which will only fall within the *defined benefit interest* definition because of the structure of its death or invalidity benefit, but is otherwise an accumulation scheme. This subsection is not intended to exclude a scheme which is properly regarded as a defined benefit scheme but which also has a defined benefit death or invalidity *component*. Notes and examples at the end of subsection 6(2) provide further guidance about the operation of section 6.
29. Note 1 under subsection 6(2) clarifies that if the defined benefit factors of an interest are only used to calculate death or invalidity benefits and are not used to calculate benefits payable in other circumstances, such as on age retirement, then paragraphs 6(1)(a) and (b) do not apply to that interest.
30. Note 2 clarifies that if an interest or component under paragraph 6(1)(c) or (d) could also fall within the circumstances of paragraph 6(1)(a) or (b), then subsection 6(2) does not prevent that interest or component from being a defined benefit interest for the purposes of the 2025 Regulations.
31. Subsection 6(3) sets out the amounts and factors, one or more of which benefits may be defined by reference to, for the purposes of subsections 6(1) and (2). These amounts and factors are:
 - the amount of the *member spouse's* salary either at the termination of employment, the date of retirement, another date, or averaged over a period
 - the amount of salary or allowance in the nature of salary to another person, for example a judicial officer, or a member of a state or territory legislature
 - a specified amount, or
 - specified conversion factors.

Section 7 – Meaning of growth phase—superannuation interests in regulated superannuation funds, approved deposit funds and RSAs

32. Section 7 outlines when a *superannuation interest* of a *member spouse* in a *regulated superannuation fund*, an *approved deposit fund* or an *RSA* is in the ‘*growth phase*’ for the purpose of the 2025 Regulations. Subsection 7(2) provides that a *superannuation interest*, or a *component* of the interest, will be in the *growth phase* at a particular date if, at that date, the *member spouse* had satisfied the requirements in subsection 7(3), (4) or (5). These requirements are expressed by reference to *relevant conditions of release*, which are defined in subsection 7(6).
33. Subsection 7(3) provides that a *superannuation interest* or a *component* of the interest is in the *growth phase* if the *member spouse* has not satisfied a *relevant condition of release* for the interest or the *component* of the interest. A note below subsection 7(3) states that the phrase *satisfies a relevant condition of release* is defined at subsection 7(6).
34. Subsection 7(4) provides that a *superannuation interest* or a *component* of the interest is in the *growth phase* if the *member spouse* has satisfied a *relevant condition*

of release, but no benefit has been paid in respect of the interest or *component*, and no action has been taken by or for the *member spouse* to cash any such benefit.

35. Subsection 7(5) provides that a *superannuation interest* or a *component* of the interest is in the *growth phase* if the *member spouse* has satisfied a *relevant condition of release*, and a benefit in respect of the interest or *component*, other than a *pension* payment, has been paid to or for the benefit of the member spouse or, if the member spouse has died, the *member spouse's* legal personal representative, but no action has been taken by or for the member spouse or the representative to receive any other benefit that the *member spouse* or their estate is entitled to as a result of satisfying the condition of release.
36. Subsection 7(6) provides the meaning of *satisfies a relevant condition of release* by reference to certain items in Schedule 1 of the SIS Regulations and Schedule 2 of the RSA Regulations. A *relevant condition of release* therefore means: retirement, death, permanent incapacity, attaining age 65, termination of gainful employment, or a terminal medical condition.
37. 'Terminal medical condition' is a condition of release listed in items 102A and 202A of Schedule 1 of the SIS Regulations and item 102A of the RSA Regulations. 'Terminal medical condition' is not listed in the 2001 Regulations. It is listed in the 2025 Regulations on the basis that death is listed as a condition of release. The effect of prescribing 'terminal medical condition' in section 7 provides that, if a *member spouse* has been granted access to their superannuation benefits by reason of them having a terminal medical condition, the *superannuation interest* will no longer be in the *growth phase* for the purposes of the 2025 Regulations.

Section 8 – Meaning of *growth phase*—superannuation interests in other eligible superannuation plans

38. Section 8 provides for when a *superannuation interest* of a *member spouse* in a *superannuation annuity* or a *superannuation fund* other than a *regulated superannuation fund* is in the '*growth phase*' for the purpose of the 2025 Regulations. Interests in *superannuation funds* that are not *regulated superannuation funds* will generally be in *exempt public sector superannuation schemes*, the vast majority of which are State schemes that are not regulated by the Commonwealth.
39. The meaning of *growth phase* applies to a *superannuation interest* or a *component* of the interest. Paragraphs 8(2)(a), (b) and (c) provide for the circumstances in which an interest or *component* is in the *growth phase*, by reference to the releasing events set out in subsection 8(3).
40. Subsection 8(3) provides for the meaning of the term *releasing event*, a concept that is intended to replicate the concept of *condition of release* in subsection 7(6) and apply it to superannuation annuities and *superannuation funds* that are not *regulated superannuation funds*, as these interests do not have applicable conditions of release set out in the SIS Regulations. As with section 7, a releasing event includes if the *member spouse* has a terminal medical condition (as defined in regulation 6.01A of the SIS Regulations).

Section 9 – Meaning of *payment phase*

41. Section 9 provides for the meaning of the term *payment phase* in the 2025 Regulations. The meaning of *payment phase* applies to a *superannuation interest* or a *component* of the interest, that is not a *small superannuation accounts interest*.
42. This section provides that an interest or *component* is in the *payment phase* if it is not in the *growth phase*. This definition does not apply to *small superannuation accounts interests*, as *splitting orders*, superannuation agreements and *flag lifting agreements* for these interests are implemented in accordance with the Small Super Accounts Regulations.

Section 10 – Meaning of *partially vested accumulation interest*

43. Section 10 provides for the meaning of the term *partially vested accumulation interest* in the 2025 Regulations.
44. Section 10(1) provides that an *accumulation interest* is a *partially vested accumulation interest* if subsection (2) or (3) applies.
45. An *accumulation interest* that a *member spouse* has in an *eligible superannuation plan* is a *partially vested accumulation interest* if the *withdrawal benefit* in relation to the *member spouse* on a particular day is less than the total amount notionally or actually allocated to the *member spouse* on that day, subject to certain exceptions.
46. The definition also includes an interest where the benefits payable to the *member spouse* may include an additional benefit that is calculated by reference to the contributions that have been made by or in respect of that spouse. In such cases there may not have been any periodic allocation of that additional benefit to the *member spouse* where it is payable only when the member spouse reaches a particular age or completes a particular period of membership with the fund in which the interest is held.
47. When an interest is fully vested, the member will be entitled to benefits once a *relevant condition of release* is met, for the purposes of the SIS Act. However, in the case of a *partially vested accumulation interest*, the member may be entitled to additional benefits after meeting specific conditions. For example, a scheme holding such an interest may provide additional superannuation benefits after an employee has completed a certain period of service within the company.

Section 11 – Meaning of *percentage-only interest*

48. Section 11 prescribes certain interests as *percentage-only interests* for the purposes of sections 90XD and 90YD of the Family Law Act. This includes superannuation annuities and certain superannuation schemes for state judges, state governors and members of certain state parliaments.
49. *Superannuation interests* in superannuation annuities were originally prescribed as *percentage-only interests* as the financial services sector requested that an interest in an eligible annuity should only be able to be split by reference to a percentage.
50. Certain other *percentage-only interests* that are prescribed in the 2001 Regulations, other than an interest in a *superannuation annuity*, are no longer prescribed as

percentage-only interests because those interests can now also be split by reference to a *base amount*.

51. *Superannuation interests* that are prescribed as *percentage-only interests* can only be split under Part VIII B or VIII C of the Family Law Act by reference to a percentage of future payments to be made to the *member spouse*. This is because splitting those interests by reference to a percentage of future payments is the most appropriate and equitable method of splitting those interests. This is the case if, for example, cliff-vesting is a feature of such interests. Sections 62 and 70 of the 2025 Regulations permit the Minister to approve methods or factors for determining the gross value of these interests. The 2001 Regulations do not permit this. If no methods or factors are approved for a particular *percentage-only interest*, the interest is valued under the Family Law Act by expert opinion evidence, rather than in accordance with the 2025 Regulations. Allowing *trustees* to propose specific methods or factors to be used to value certain types of *superannuation interests* creates consistency and efficiencies in valuing these particular types of *superannuation interests*.
52. Subsection 11(2) provides that the superannuation interest is not prescribed as a *percentage-only interest* if, immediately before those interests were prescribed as *percentage-only interests* (on the dates listed in the table at subsection 11(2)), the interest was already subject to a superannuation agreement, *flag lifting agreement* or a *splitting order*, if subsection 90XJ(5) or 90YN(5) of the Family Law Act applies to the interest, or if the *non-member spouse* has served a waiver notice on the *trustee* under section 90XZA or 90YZQ of the Family Law Act in respect of the interest.
53. This will ensure that payment splitting arrangements for such interests proceed on the same basis on which the order or agreement for the interest was made. The interest will still be a *percentage-only interest* for the purpose of a second or subsequent split of the interest (for example, where the *member spouse* splits their interest a second time following the breakdown of a later relationship).
54. Subsection 11(3) clarifies that subsection 11(2) only operates to exclude a specific interest from being a *percentage-only interest*, as it relates to a particular agreement, order or notice.
55. Subsection 11(4) clarifies that a reference in subsection 11(1) to an Act of a State or Territory is taken to be a reference to that Act as in force on 1 April 2025.

Section 12 – Meaning of *trustee*

56. Section 12 prescribes certain persons to be captured within the definition of *trustee* in sections 90XD and 90YD of the Family Law Act. The additional persons are listed in column 3 of the table at subsection 12(1). This ensures the appropriate person or office holder, who is able to carry out obligations with respect of the Family Law Act and the 2025 Regulations in relation to a superannuation interest in the plan, is identified for each of the plans listed in this section. This is necessary as in some cases, these persons may not be captured by the definition of *trustee* under the Family Law Act.
57. As per the *Acts Interpretation Act 1901*, references to persons include a body politic or corporate as well as an individual.

Section 13 – Meaning of *unflaggable interest*

58. Section 13 provides that a superannuation interest of a *member spouse* that is in the *payment phase* is prescribed as an *unflaggable interest* for the purposes of sections 90XD and 90YD of the Family Law Act.
59. This prevents a *payment flag* being placed on a superannuation interest that is already paying benefits (for example, when a *member spouse* has retired and is receiving regular *pension* payments).

Section 14 – Meaning of *unsplittable interest*

60. Section 14 prescribes interests that are *unsplittable interests* for the purpose of sections 90XD and 90YD of the Family Law Act. While most *superannuation interests* can be split following separation either by agreement or order, section 14 provides that certain *superannuation interests* of minimal value are *unsplittable interests*; that is, the interest itself cannot be split by agreement or order. This recognises that splitting superannuation of minimal value is not cost effective for the parties and the administrative burden on superannuation *trustees* to implement splitting for such interests is not justifiable.
61. Subsection 14(2) provides that a superannuation interest of a *member spouse* is an *unsplittable interest* if the whole or remaining part of the benefits are being paid to the *member spouse* as a *lifetime pension* or fixed-term *pension* that the member is no longer entitled to commute, or a lifetime annuity or fixed term annuity, and the amount of the annual benefit payable to the member is less than \$4,000.
62. Subsection 14(3) provides that a superannuation interest of a *member spouse* is an *unsplittable interest* if the superannuation is not an interest with respect to which the whole or remaining part of the benefits are being paid to the *member spouse* as a *lifetime pension* or fixed-term *pension* that the member is no longer entitled to commute, or a lifetime annuity or fixed term annuity, and the *withdrawal benefit* in relation to the *member spouse* is less than \$10,000.
63. The dollar amounts in subsections 14(3) and (4) have been increased from those listed in the 2001 Regulations, in recognition of the fact that the real value of these thresholds has decreased since the 2001 Regulations were made in 2001 due to inflation and changes in prices, living costs and wages.
64. Subparagraphs 14(1)(b)(i) and (ii) exclude a superannuation interest in the scheme provided under the *Judges' Pensions Act 1971 (SA)* as *in force* on the day the 2025 Regulations commence, and a superannuation interest in the scheme constituted by the *Parliamentary Contributory Superannuation Act 1948* as *unsplittable interests*. This means that *superannuation interests* in these schemes will always be considered splittable interests for the purpose of a superannuation agreement or *flag lifting agreement*, or *splitting order*.
65. This is to account for the fact that interests in these schemes may provide *pension* benefits only on satisfaction of particular conditions (for example, after a minimum period of service for a sitting judge), or there may be circumstances in which the *pension* or annuity benefit payable to the *member spouse* may be temporarily reduced (for example, while a former federal parliamentarian is receiving a salary or an allowance for being a member of a state parliament or territory legislative assembly). This enables a *member spouse* with a superannuation interest in such a scheme to

provide for a payment split in respect of the interest in a family law property settlement, even if the order or agreement is contemplated at a time when a *pension* or annuity payable to a member under that scheme has been temporarily reduced, or before a relevant condition has been satisfied.

66. Subsection 14(4) clarifies, for the avoidance of doubt, that just because certain payments in respect of a superannuation interest are not *splittable payments* (for example, as set out in Parts 2 and 3 of the 2025 Regulations), this does not mean that the interest itself is unsplitable (in the same manner that interests prescribed by this section are unsplitable). Payments that are not *splittable payments* are the types of payments to a *member spouse* from their superannuation interest to which an order or agreement under Part VIII B or VIII C of the Family Law Act will not apply. A superannuation interest is only an *unsplitable interest* if it meets the requirements in section 14.

Section 15 – Meaning of *lifetime pension* etc.

67. Section 15 of the 2025 Regulations supports the definition of ‘*lifetime pension*’ by clarifying that, for the purposes of the 2025 Regulations, certain benefits that are paid as a *pension* are not prevented from being a *lifetime pension* or *pension* payable for the life of a *member spouse* merely because they are paid upon retirement (including retirement on the basis of invalidity) and because, under the governing rules of the plan, the payments may be varied (including reduced to nil), suspended or cancelled.
68. In *Commissioner of Taxation v Douglas* [2020] FCAFC 220 (4 December 2020), the Full Court held, with respect to specific invalidity benefits paid under *pensions* that commenced on or after 20 September 2007, that the benefits did not meet certain standards under the SIS Regulations. Specifically, the court held that MSBS rules and DFRDB rules relating to invalidity benefits did not meet the minimum standards contained in subregulations 1.06(9A) and 1.06(2) of the SIS Regulations to be considered ‘superannuation income stream benefits’. This was because the rules of these schemes did not ensure that benefits were made annually throughout the life of the beneficiary.
69. The 2025 Regulations define the term *pension* in accordance with the broader definition of pension in section 10 of the SIS Act. The 2025 Regulations treat the invalidity *pensions* under the MSBS and the DFRDB as *lifetime pensions* and *pensions* payable for the life of a member, for the purposes of the 2025 Regulations.
70. Section 15 provides that the mere fact that *pension* payments can be varied (including reduced to nil), suspended or cancelled does not prevent that *pension* from being considered to be a *lifetime pension* or *pension* payable for the life of a *member spouse* for the purpose of family law superannuation splitting. This includes invalidity *pensions* under the MSBS, the DFRDB and the ADF Cover Scheme, and other *pensions* paid on retirement (including, but not limited to, retirement on the basis of invalidity) where the payments can be varied, suspended or cancelled, for example *pensions* under the Commonwealth Superannuation Scheme, *Public sector superannuation scheme* and the Parliamentary Contributory Superannuation Scheme. This is not an exhaustive list.

Part 2—Payments that are not splittable payments: payments of a particular character, or payments after death of member spouse

71. Part 2 provides that payments of a particular character and payments after the death of a *member spouse* are not *splittable payments*.

Section 16 – Payments of a particular character that are not splittable payments

72. Section 16 prescribes certain payments made to the *member spouse* in respect of their *superannuation interest* as not *splittable payments* for the purposes of subsections 90XE(2) and 90YG(2) of the Family Law Act. This means that these payments cannot be subject to a split under any superannuation agreement or *flag lifting agreement*, or *splitting order*.
73. The legislative note at the end of subsection 16(1) makes clear that prescribed payments to a *member spouse* under this section will not be *splittable payments* generally, rather than only not being a *splittable payment* for a particular payment split. The note directs the reader to subsections 90XE(2) and 90YG(2) of the Family Law Act.
74. Subsection 16(2) prescribes such payments made to the *member spouse* as those that are made:
- on compassionate grounds (paragraphs 16(2)(a), (d) and (e))
 - because the *member spouse* is taken to be in severe financial hardship (paragraph 16(2)(b)), or
 - as *pension* payments paid on the basis of the member’s temporary incapacity, except in certain circumstances (paragraph 16(2)(c)).
75. Paragraph 16(2)(a) prescribes a payment of benefits to the *member spouse* on compassionate grounds in accordance with the SIS Regulations or the RSA Regulations as a payment that is not splittable.
76. Paragraph 16(2)(b) prescribes a payment to the *member spouse* made due to severe financial hardship as a payment that is not splittable.
77. The policy intent underlying these two paragraphs is that payments made on compassionate grounds, or made due to severe financial hardship, should not be available to be split with a *non-member spouse*.
78. Paragraph 16(2)(c) prescribes a *pension* payment to the *member spouse* made due to temporary incapacity within the meaning of the SIS Regulations as not splittable. However, such payments nonetheless will be splittable if they are:
- one of a series of payments that have been paid to the *member spouse* for at least 2 years, and made more than 2 years after the first such payment (subparagraph 16(2)(c)(i))
 - a payment to which paragraph 16(2)(g) applies, which set out certain payments made to the *member spouse* in respect of an interest in the superannuation scheme constituted by *Superannuation (State Public Sector) Act 1990* (Qld) (subparagraph 16(2)(c)(ii)), or

- a payment from a *lifetime pension* (subparagraph 16(2)(c)(iii)). This will draw on the definition of *lifetime pension* in sections 4 and 15 of the 2025 Regulations.
79. The policy intent underlying paragraph 16(2)(c) is that temporary payments for illness or incapacity that are paid from a *pension* (within the meaning of section 10 of the SIS Act) should not be regarded as superannuation available to be split with a *non-member spouse* unless those payments have been made for at least 2 years. However, long-term *pension* payments, even when they are paid to the *member spouse* on the basis of the *member spouse's* temporary incapacity, should be splittable immediately. Payments captured as not splittable by operation of paragraph 16(2)(g) will be carved out from being captured as not splittable by operation of subparagraph 16(2)(c)(ii).
 80. Paragraph 16(2)(d) provides that a payment made to the *member spouse* on compassionate grounds in respect of an interest held in a fund that is not a *regulated superannuation fund* is not a *splittable payment*.
 81. Paragraph 16(2)(e) provides that a payment made to the *member spouse* on compassionate grounds in respect of an interest that is in a *superannuation annuity* is not a *splittable payment*.
 82. Paragraph 16(2)(f) prescribes that payments made to a *member spouse* under either of two Commonwealth *public sector superannuation schemes* constituted by the *Superannuation Act 1976* and *Superannuation Act 1990* (more commonly known as the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme, (PSS) respectively), are not splittable if made while the *member spouse's* health is being assessed for the purpose of determining eligibility for a totally and permanently incapacitated benefit, or if made to supplement salary which has been reduced because of ill health.
 83. Paragraph 16(2)(g) prescribes that certain payments made to the *member spouse* in respect of an interest in the superannuation scheme constituted by *Superannuation (State Public Sector) Act 1990 (Qld)* for income protection or reasons of incapacity, are not *splittable payments*. These payments, which may otherwise have been captured as not splittable by operation of paragraph 16(2)(c), will be carved out from being captured by paragraph 16(2)(c) by operation of subparagraph 16(2)(c)(ii).
 84. A legislative note under this paragraph states that, in 2024, the scheme continued in existence by the *Superannuation (State Public Sector) Act 1990 (Qld)* was known as the Australian Retirement Trust.
 85. Paragraph 16(2)(h) prescribes that payments made to a *member spouse* from an account in the Superannuation Holding Accounts Reserve (Reserve) established under the Small Super Accounts Act are not splittable if the Commissioner of Taxation, who administers that Act, has created a separate account for the *non-member spouse* in the Reserve and transferred an amount to that account. Section 15 of the Small Super Accounts Act gives the Commissioner the power, when served with a payment split in respect of an account in the Reserve, to open a separate account for the *non-member spouse* in the Reserve with a balance of an amount to be worked out in accordance with regulations made under the Small Super Accounts Act.

86. Subsection 16(3) defines the following terms for the purposes of this section:
- **Government Division Rules** means the Division Rules *in force* on 1 April 2025 within the meaning of the trust deed that governs the scheme constituted under section 5 of the *Superannuation (State Public Sector) Act 1990* (Qld) relating to the Government Division referred to in clause 2.1 of that deed.
 - **Participation Schedule** means the part of the **Government Division Rules** known as the Participation Schedule.
 - **Severe financial hardship** has the meaning in subregulation 6.01(5) of the SIS Regulations.

Section 17 – Payments after death of member spouse that are not splittable payments

87. Subsection 17(1) prescribes certain payments made after the death of a *member spouse* in respect of their *superannuation interest* as payments that are not *splittable payments* for the purposes of subsections 90XE(2) and 90YG(2) of the Family Law Act. This means that these payments cannot be subject to a split under any superannuation agreement or *flag lifting agreement*, or *splitting order*.
88. The legislative note at the end of subsection 17(1) provides that prescribed payments to a *member spouse* under this section will not be a *splittable payment* generally, rather than only not being a *splittable payment* for a particular payment split. The note directs the reader to subsections 90XE(2) and 90YG(2) of the Family Law Act.
89. Subsection 17(2) prescribes that payments are not *splittable payments* for the purposes of subsection 17(1) if they are made to a *reversionary beneficiary*:
- who is a child in relation to the *member spouse*, who:
 - has not turned 18, or
 - has turned 18, and who is completing his or her education or has special needs because of a disability, or
 - for the benefit of such a child.
90. Subsection 17(3) defines *child* in relation to a *member spouse* who has a *superannuation interest* in an *eligible superannuation plan*. A person will be considered a *child* of the *member spouse* when:
- the person meets the definition of child in section 60F of the Family Law Act. That section provides the circumstances when a person is a child of a *marriage*.
 - the person meets the definition of child under the governing rules of the superannuation plan (usually the trust deed)
 - the *trustee* of the plan has determined the person to be a child
 - the *member spouse* had responsibility for the day-to-day care of the person under a court order made in:
 - Part VII of the Family Law Act
 - Part 5 of the *Family Court Act 1997* (WA), or

- a corresponding law of a foreign country.

91. The policy intent underlying section 17 is that the types of payments outlined above should not be available to be split with a *non-member spouse*, as they are made to support the care, welfare and development of a child.

Part 3—Payments that are not splittable payments: payments made in particular circumstances

Division 1—Preliminary

92. Part 3 provides that a payment in respect of a *superannuation interest* of a *member spouse* is not a *splittable payment* for the purposes of Part VIIIIB or VIIC of the Family Law Act, if it is a payment made in particular circumstances. All payments payable to the *member spouse* in respect of the interest are prescribed as ‘not splittable’ after a particular event occurs. Prescription of these payments has the effect of bringing to an end the payment splitting arrangements under a superannuation agreement, *flag lifting agreement* or *splitting order* where the *non-member spouse* has received the effect of the agreement or order in some other way (for example, by the creation of a new interest in the *non-member spouse*’s name in the *member spouse*’s *superannuation fund*) at an earlier time than the *member spouse*’s receipt of superannuation benefits.

Section 18 – Simplified outline of this Part

93. Section 18 provides a simplified outline of the Part.

Section 19 – Meaning of relevant condition of release

94. Section 19 defines *relevant condition of release* for the purposes of the 2025 Regulations.

95. Subsection 19(1) provides the relevant conditions of release for interests in different superannuation plans:

- For a *superannuation interest* in a *regulated superannuation fund* or an *exempt public sector superannuation scheme*, a *relevant condition of release* is in item 101, 102, 102A, 103 or 106 of Schedule 1 in the SIS Regulations. These conditions relate to retirement, death, a terminal medical condition, permanent incapacity, or attaining 65 years of age. The expression ‘*regulated superannuation fund*’ is defined in section 19 of the SIS Act.
- For an *approved deposit fund*, a *relevant condition of release* is in item 201, 202, 202A, 203 or 206 of Schedule 1 to the SIS Regulations. These conditions relate to retirement, death, a terminal medical condition, permanent incapacity, or attaining 65 years of age. The phrase ‘*approved deposit fund*’ is defined in section 10 of the SIS Act.
- For an *RSA*, a *relevant condition of release* is in item 101, 102, 102A, 103 or 106 of Schedule 2 in the RSA Regulations. These conditions relate to retirement, death, a terminal medical condition, permanent incapacity, or attaining 65 years of age. The phrase ‘retirement savings account’ is defined in section 8 of the RSA Act.

- For a *superannuation annuity*, a *relevant condition of release* is in item 201, 202, 202A, 203 or 206 of Schedule 1 to the SIS Regulations. These conditions relate to retirement, death, a terminal medical condition, permanent incapacity, or attaining 65 years of age.
96. Subsection 19(2) provides that a *non-member spouse* satisfies a condition of release if the event has occurred in relation to the *non-member spouse*. This ensures that the conditions of release set out in paragraphs 19(1)(a), (b), (c) and (d) apply for the relevant *superannuation interest* for the purposes of the 2025 Regulations, regardless of whether they apply for the relevant *superannuation interest* under the legislation from which their definitions are drawn.
97. Subsection 19(3) provides that a reference to the term ‘member’ in the definition of ‘permanent incapacity’ at regulation 1.03C and subregulation 6.01(7) of the SIS Regulations is taken to be a reference to the *non-member spouse*. Subsection 19(4) provides that a reference to the term ‘RSA holder’ in the definition of ‘permanent incapacity’ at subregulation 4.01(2) and 4.01(4) of the RSA Regulations is taken to be a reference to the *non-member spouse*. These subsections seek to make clear that the relevant conditions of release identified in subsection 19(1) by reference to other legislation are to be considered in relation to the *non-member spouse* for the purposes of the 2025 Regulations.

Division 2—Circumstances when payments are not splittable payments

Section 20 – Circumstances when payments are not splittable payments

98. Subsection 20(1) applies to subsection 20(2) to a payment in respect of a *superannuation interest* where:
- a superannuation agreement, *flag lifting agreement* or *splitting order* applies to the *superannuation interest*, and
 - the payment is made after the requirements of a Subdivision of Division 3 or 4, or Division 5, are met for the *non-member spouse*’s entitlement. These Subdivisions and Divisions deal with payments that relate to particular types of *superannuation interests*, where the *trustee* or the *non-member spouse* has taken particular actions to satisfy the *non-member spouse*’s entitlement for the interest under a superannuation agreement or order, rather than splitting each *splittable payment* as it becomes payable to the *member spouse*.
99. Subsection 20(2) provides that payments prescribed as not *splittable payments* under Division 2 of Part 3 are prescribed for the purposes of applying Part VIIIIB or Part VIIC of the Family Law Act to a superannuation agreement, *flag lifting agreement* or *splitting order*. Subsections 90XE(2) and 90YG(2) of the Family Law Act provide the power for the 2025 Regulations to prescribe a payment as a not *splittable payment* generally (that is, for the purposes of all *payment splits* in respect of a *superannuation interest*) or for the purposes of applying Part VIIIIB or VIIC to a particular payment split under a particular agreement or order in respect of a *superannuation interest*.

Division 3—When the payment relates to a superannuation interest that is not a percentage-only interest

100. Division 3 provides two sets of circumstances where payments to a *non-member spouse* are not *splittable payments* for a *superannuation interest* that is not a *percentage-only interest*.

Subdivision A—New interest created, or amount transferred or rolled over or paid, under SIS Regulations or RSA Regulations, in satisfaction of the non-member spouse’s entitlement.

Section 21 – Requirements of this Subdivision

101. Section 21 provides the circumstances in which payments in respect of a *superannuation interest* that is not a *percentage-only interest* are not *splittable payments* for the purposes of section 20. Those circumstances are when the *trustee* has complied with the relevant operating standards by taking an option under the payment split provisions in the SIS Regulations (at Part 7A, other than Division 7A.3) or the RSA Regulations (at Part 4A, other than Division 4A.4). Those Divisions operate to require a *trustee* to choose from particular options in satisfaction of an agreement or order made under Part VIII B or VIII C of the Family Law Act in relation to an *accumulation interest* (other than a *partially vested accumulation interest*) in the *growth phase*, or in relation to an interest, in respect of which an *allocated pension, market linked pension* or *account-based pension* is being paid.
102. Those options are to:
- establish a new interest or *RSA* for the *non-member spouse*
 - transfer an equivalent amount to the *non-member spouse* that the *non-member spouse* would have been required to have if a new interest or *RSA* were established under the SIS Regulations or RSA Regulations, or
 - pay to the *non-member spouse* an amount that is at least the amount to which the *non-member spouse* is entitled in respect of the interest at the time of the payment.
103. Where one of those operating standards options has been taken, the *non-member spouse's* entitlement under the agreement or order will have been satisfied. Reflecting this, section 21 provides in these circumstances for payments in respect of the *superannuation interest* of a *member spouse* to be not *splittable payments* for the purpose of applying Part VIII B or VIII C of the Family Law Act to the order or agreement.

Subdivision B—New interest otherwise created, or amount otherwise transferred or rolled over or paid, by trustee, or separate entitlement arising, in satisfaction of the non-member spouse’s entitlement under agreement or order

Section 22 – Requirements of this Subdivision

104. Section 22 provides the requirements of Subdivision B of Division 3. Subsection 22(1) provides that the requirements are met for a *non-member spouse’s* entitlement if either section 23 or 24 applies for the interest, where the interest is not a *percentage-only interest*, and is in a *superannuation fund* or an *approved deposit*

fund. Where the requirements are met for Subdivision B, any future payments in respect of the *superannuation interest* are not *splittable payments*.

105. The legislative note under subsection 22(1) provides, for the avoidance of doubt, that section 23 will apply if any of its subsections applies for the interest.
106. Subsection 22(2) excludes certain interests from having the circumstances set out in section 23 apply to them. In the case of any new interest created, or a transfer, rollover or payment for a *non-member spouse* in respect of a *defined benefit interest*, the governing rules of the plan must not provide for the reduction of the benefit payable to any other member of the plan other than the *member spouse* or a *reversionary beneficiary* of the *member spouse*. If the governing rules of the plan provide for this, section 23 will not apply for the interest.

Section 23 – Main circumstances when this Subdivision applies

107. Section 23 provides five main circumstances when section 22 applies for an interest that is not a *percentage-only interest* that is in a *superannuation fund* or an *approved deposit fund*, where the *trustee* chooses to create a new interest for the *non-member spouse*, rollover or transfer an amount to another superannuation plan for the benefit of the *non-member spouse*, or make a payment to the *non-member spouse*.
108. The circumstances in section 23 refer to an amount with ‘a value of at least the value of the *non-member spouse*’s entitlement for the interest’ at the time the new interest is created, the rollover or transfer occurs, or the payment is made, as follows:
 - The interest is not a *defined benefit interest* in a self-managed *superannuation fund* and the *trustee* has, under an agreement or order and under the plan’s governing rules, created a new interest in the plan for the *non-member spouse*, or rolled over or transferred to another fund or *RSA*, an amount to be held for the benefit of the *non-member spouse* (subsection 23(1)).
 - The interest is a *defined benefit interest* in a self-managed *superannuation fund* and the *trustee* has, under an agreement or order and under the plan’s governing rules, transferred to another fund or *RSA* an amount to be held for the benefit of the *non-member spouse* (subsection 23(2)).
 - The *non-member spouse* has satisfied a *relevant condition of release* for an interest in a *regulated superannuation fund*, an *exempt public sector superannuation scheme* or an *approved deposit fund* and the *trustee* has, under an agreement or order, paid an amount to the *non-member spouse* (subsection 23(3)).
 - The *member spouse* is being paid a *pension* in respect of the interest at the *operative time* in relation to the agreement or order, the interest is in a *regulated superannuation fund*, an *exempt public sector superannuation scheme* or an *approved deposit fund*, and the *trustee* has paid an amount to the *non-member spouse* (subsection 23(4)).
 - The interest is in a *superannuation fund* that is not a *regulated superannuation fund* or an *exempt public sector superannuation fund* and the *trustee* has paid an amount to the *non-member spouse* (subsection 23(5)).

109. If any of the circumstances set out in subsections 23(1) to (5) have occurred in relation to the interest, then section 22 applies. This means that Subdivision B of Division 3 applies, with the result that any future payments payable to the *member spouse* in respect of the *member spouse's* interest are not *splittable payments*.
110. Subsection 23(6) provides that, for the avoidance of doubt, none of the subsections of section 23 require the *trustee* of the relevant *eligible superannuation plan* to do something mentioned in the subsections. This means that a *trustee* may elect to do any of the things in the subsections in satisfaction of the *non-member spouse's* entitlement for the interest under the agreement or order, and in lieu of splitting each *splittable payment* as it becomes payable to the *member spouse*. If a *trustee* elects not to do any of the things mentioned in section 23, and if there are no other relevant circumstances that render payments in respect of the interest as not *splittable payments*, then the *trustee* must instead calculate the *non-member spouse's* entitlement from each *splittable payment* as it becomes payable to the *member spouse*, in accordance with the Family Law Act and the 2025 Regulations.

Section 24 – Other circumstance—public sector superannuation schemes in which a separate entitlement arises for the non-member spouse

111. Section 24 provides for a circumstance in which a separate entitlement to benefits has arisen for the *non-member spouse* in relation to the order or agreement, either under the governing rules of the *public sector superannuation scheme* in which the *member spouse's* interest is held, or under the governing rules of another *public sector superannuation scheme*.
112. In this circumstance, section 22 will apply. This means that Subdivision B of Division 3 applies, with the result that any future payments payable to the *member spouse* in respect of the *member spouse's* interest are not *splittable payments*.
113. If the interest in the *public sector superannuation fund* is a *defined benefit interest*, the governing rules of the plan must not provide for the reduction of the benefit payable to any other member of the plan other than the *member spouse* or a *reversionary beneficiary* of the *member spouse*. If the governing rules of the plan provide for this, section 24 will not apply for the interest.
114. Paragraph 24(a) provides that ***original scheme*** means the *public sector superannuation scheme* which holds the interest that is subject to an agreement or order. This avoids doubt where the governing rules of the original scheme provide for the *non-member spouse's* entitlement to be created in a different *public sector superannuation scheme*.
115. Section 24 is intended to account for circumstances where, when a *member spouse* is not yet receiving a *pension* under a particular *public sector superannuation scheme* at the *operative time*, an entitlement to benefits arises for the *non-member spouse* under a different scheme, rather than under the same scheme in which the *member spouse's* entitlement is held. This may be particularly relevant where the original scheme in which the *member spouse's* interest is held is unfunded and has closed.
116. Section 24 removes the possibility that a *non-member spouse* with a *splitting order* or agreement in respect of a *member spouse's* interest in the original scheme, might seek to both retain their entitlement to benefits under the new scheme, and enforce the order or agreement against the *trustee* of the original scheme.

Section 25 – Meaning of *value of the non-member spouse’s entitlement*

117. Section 25 defines, for the purposes of Subdivision B of Division 3, the expression *value of the non-member spouse’s entitlement* for the *superannuation interest* as the time when the *trustee* carries out one of the actions described in section 23, or when a separate entitlement arises for the *non-member spouse* as described in section 24. Subsection 25(1) defines the expression *termination time* as the time the *trustee* carries out such an action or the time the *non-member spouse’s* entitlement arises.
118. The *value of the non-member spouse’s entitlement* for the *superannuation interest* at the *termination time* is to be determined by reference to a *base amount* or to a percentage, subject to whether the *non-member spouse’s* entitlement under the agreement or order.
119. Paragraph 25(1)(a) provides that when a *base amount* applies in relation to a *superannuation interest*, the value of the non-member spouse’s entitlement for the interest at the termination time is calculated under subsection 25(2) or (3).
120. Paragraph 25(1)(b) provides that if a specified percentage is to apply to all *splittable payments* in respect of the interest, the value of the non-member spouse’s entitlement for the interest at the termination time is calculated under subsection 25(4). Subparagraphs 90XJ(1)(c)(iii) and 90YN(1)(c)(iii), and paragraphs 90XT(1)(b) and 90YY(1)(b) of the Family Law Act enable a percentage to apply to all *splittable payments* in respect of a *superannuation interest* under a superannuation agreement, *flag lifting agreement*, or *splitting order*.

Value—if a base amount applies in relation to the interest

121. Subsections 25(2) and (3) provide how to calculate the value of the *non-member spouse’s entitlement* for the interest at the termination time if a *base amount* applies to the interest, as required under paragraph 25(1)(a).
122. Paragraphs 25(2)(a) and (b) provide that, if the termination time is before the first payment (that would, if not for the operation of section 25, be a *splittable payment*) becomes payable in respect of the *superannuation interest* (paragraph 25(2)(a)), or if one or more payments (that would, if not for the operation of section 25, be a *splittable payment* or payments) become payable in respect of the interest after the termination time, and the amount the first such payment is either the sum of the *adjusted base amount applicable to the non-member spouse* (if one applies) at termination time and any fees payable by the *non-member spouse*, or the sum of the *base amount applicable to the non-member spouse* at termination time and any fees payable by the *non-member spouse*, then the value of the non-member spouse’s entitlement for the interest at termination time is, as the case requires:
- the *base amount* specified by, or calculated in accordance with a method specified by, the relevant agreement or order (paragraph 25(2)(c))
 - the *base amount* allocated to the *non-member spouse* under subsection 90XT(4) or 90YY(5) of the Family Law Act (paragraph 25(2)(d)), or
 - the *adjusted base amount applicable to the non-member spouse* at the termination time.

123. The meaning of *adjusted base amount applicable to the non-member spouse*, and prescribed methods for adjusting the *base amount*, is provided at Subdivision C in Division 1 of Part 7 of the 2025 Regulations.
124. Subsection 25(3) provides that, if neither paragraphs 25(2)(a) or (b) apply for the purposes of paragraph 1(a), then the value of the non-member spouse's entitlement for the interest at the termination time is calculated using a formula. The formula provides that the entitlement is to be calculated by multiplying the proportion of each second and subsequent *splittable payment* that the *non-member spouse* will be entitled to be paid under Part 7 of the 2025 Regulations, by the value of the *superannuation interest* calculated by such method as a court would consider appropriate (for an interest in a *self managed superannuation fund*), or the value calculated for the interest at the termination time under Division 2 of Part 6 of the 2025 Regulations (for other *superannuation interests*), as if references in that Division to "the *relevant date*" were references to "the termination time". Any fees payable by the *non-member spouse* under section 98 of the 2025 Regulations are then subtracted from the resulting amount, which provides the value of the entitlement.

Value—specified percentage is to apply to all splittable payments in respect of the interest

125. Subsection 25(4) provides how to calculate the value of a *non-member spouse's* entitlement where a specified percentage applies to all *splittable payments* in respect of the interest, for the purposes of paragraph 25(1)(b). The entitlement is the *default amount* multiplied by the percentage in the agreement or order minus fees.
126. Subsection 25(4) provides that the *default amount* means:
- for an interest that is neither an *accumulation interest* nor an interest in a *self managed superannuation fund*, the amount in relation to the interest at the termination time that a court would determine under Part 6 of the 2025 Regulations (paragraph (a) of the definition)
 - for an *accumulation interest* that is not a partially vested accumulated 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 under Part 6 of the 2025 Regulations if item 3 of the table in section 51, and subsection 53(2), applied for the interest. Subsection 53(2) prescribes the gross value of the interest is determined by reference to a particular value set out in a statement issued by the *trustee* (paragraph (b) of the definition).
 - for 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 90XT(2)(b) or 90YY(2)(b) of the Family Law Act (paragraph (c) of the definition). This is intended to ensure that the *trustee* values the interest in the *self managed superannuation fund* using a best practice valuation approach, ordinarily undertaken by an expert or specialist, as Part 6 of the 2025 Regulations does not prescribe a valuation approach for an interest in a *self managed superannuation fund*.
127. Part 6 of the 2025 Regulations prescribes how to determine the value of certain *superannuation interests of member spouses*.

Division 4—When the payment relates to a superannuation interest that is a percentage-only interest

Subdivision A—New interest created, or amount transferred or rolled over or paid, by trustee, or separate entitlement arising, in satisfaction of non-member spouse’s entitlement under agreement or order

Section 26 – Requirements of this Subdivision

128. Section 26 provides the requirements of Subdivision A of Division 4. Subsection 26(1) provides that the requirements are met for a *non-member spouse’s* entitlement under an agreement or order in respect of the interest, if either section 27 or 28 applies for the interest, where the interest is a *percentage-only interest* in a *superannuation fund* or an *approved deposit fund*.
129. A legislative note under section 26 makes clear that section 27 will apply if any of its subsections applies for the interest.
130. Subsection 26(2) excludes certain interests from having the circumstances set out in section 27 apply to them. In the case of any new interest created, or a transfer, rollover or payment to a *non-member spouse* in respect of a *defined benefit interest*, the governing rules of the plan must not provide for the reduction of the benefit payable to any other member of the plan other than the *member spouse* or a *reversionary beneficiary* of the *member spouse*. If the governing rules of the plan provide for this, section 27 will not apply for the interest.

Section 27 – Main circumstances when this Subdivision applies

131. Section 27 provides five main circumstances when section 26 applies for a *percentage-only interest* in a *superannuation fund* or an *approved deposit fund*, where the *trustee* has created a new interest for the *non-member spouse*, rolled over or transferred an amount to another superannuation plan for the benefit of the *non-member spouse*, or made a payment to the *non-member spouse* (where the *non-member spouse* has reached a condition of release). The circumstances in section 27 refer to an amount with ‘a value of at least the value of the *non-member spouse’s* entitlement’ for the interest at the time the new interest is created, the rollover or transfer occurs, or the payment is made, as follows:
- The *trustee* has, under an agreement or order and under the plan’s governing rules, while the interest was in the *payment phase*, created a new interest in the plan for the *non-member spouse*, or rolled over or transferred to another fund or *RSA*, an amount to be held for the benefit of the *non-member spouse* (subsection 27(1)).
 - The *non-member spouse* has satisfied a *relevant condition of release* for an interest in a *regulated superannuation fund*, an *exempt public sector superannuation scheme* or an *approved deposit fund*, and while the interest was in the *payment phase*, the *trustee* has, under an agreement or order, paid an amount to the *non-member spouse* (subsection 27(2)).
 - The *member spouse* is being paid a *pension* in respect of the interest at the *operative time* in relation to the agreement or order, the interest is in a *regulated superannuation fund*, an *exempt public sector superannuation*

scheme or an *approved deposit fund*, and the *trustee* has paid an amount to the *non-member spouse* (subsection 27(3)).

- The interest is in a *superannuation fund* that is not a *regulated superannuation fund* or an exempt public sector *superannuation fund* and while the interest was in the *payment phase*, the *trustee* has paid an amount to the *non-member spouse* (subsection 27(4)).

132. If any of the circumstances set out in subsections 27(1) to (4) have occurred in relation to the interest, then section 22 applies. This means that Subdivision A of Division 4 applies, with the result that any future payments payable to the *member spouse* in respect of the *member spouse's* interest are not *splittable payments*.
133. Subsection 27(5) provides that, for the avoidance of doubt, none of the subsections of section 27 require the *trustee* of the relevant *eligible superannuation plan* to do any of the things mentioned in the subsections. This makes clear that a *trustee* may elect to do any of the things in the subsections in satisfaction of the *non-member spouse's* entitlement for the interest under the agreement or order, and in lieu of splitting each *splittable payment* as it becomes payable to the *member spouse*. If a *trustee* elects not to do any of the things mentioned in section 27, and if there are no other relevant circumstances that render payments in respect of the interest as not *splittable payments*, then the *trustee* must instead calculate the *non-member spouse's* entitlement from each *splittable payment* as it becomes payable to the *member spouse*, in accordance with the Family Law Act and the 2025 Regulations.

Section 28 – Other circumstance—public sector superannuation schemes in which a separate entitlement arises for the non-member spouse

134. Section 28 provides for a circumstance in which, while the interest was in the *payment phase*, a separate entitlement to benefits has arisen for the *non-member spouse* in relation to the order or agreement, either under the governing rules of the *public sector superannuation scheme* in which the *member spouse's percentage-only interest* is held, or under the governing rules of another *public sector superannuation scheme*.
135. In these circumstances, section 26 applies. This means that Subdivision A of Division 4 applies, with the result that any future payments payable to the *member spouse* in respect of the *member spouse's percentage-only interest* are not *splittable payments*.
136. If the *percentage-only interest* in the *public sector superannuation fund* is a *defined benefit interest*, the governing rules of the plan must not provide for the reduction of the benefit payable to any other member of the plan other than the *member spouse* or a *reversionary beneficiary* of the *member spouse*. If the governing rules of the plan provide for this, section 28 will not apply for the interest.
137. Paragraph 28(a) provides that ***original scheme*** means the *public sector superannuation scheme* which holds the *percentage-only interest* that is subject to an agreement or order. This avoids doubt where the governing rules of the original scheme provide for the *non-member spouse's* entitlement to be created in a different *public sector superannuation scheme*.
138. Section 28 is intended to account for circumstances where, when the *member spouse's* interest is held in a particular *public sector superannuation scheme*, an

entitlement to benefits arises for the *non-member spouse* under a different scheme, rather than under the same scheme in which the *member spouse's* entitlement is held. Section 28 removes the possibility that a *non-member spouse*, with a *splitting order* or agreement in respect of a *member spouse's* interest in the original scheme, might seek to both retain their entitlement to benefits under the new scheme, and enforce the order or agreement against the *trustee* of the original scheme.

Section 29 – Meaning of *value of the non-member spouse's entitlement*

139. Section 29 defines, for the purposes of Subdivision B of Division 3, the expression ***value of the non-member spouse's entitlement*** for the *superannuation interest* at a particular time.
140. Paragraph 29(1)(a) provides that, if the agreement identified a percentage that was to apply for the purposes of subparagraph 90XJ(1)(b)(i) or 90YN(1)(b)(i) of the Family Law Act, or if the order was made under paragraph 90XT(1)(c) or 90YY(1)(c) of the Family Law Act, the value of the non-member spouse's entitlement for the *superannuation interest* is to be calculated for the particular time in accordance with Part 2 of Schedule 2.
141. Paragraph 29(1)(b) provides that, if the agreement identified a percentage that was to apply for the purposes of subparagraph 90XJ(1)(b)(ii) or 90YN(1)(b)(ii) of the Family Law Act, or if the order was made under paragraph 90XT(1)(b) or 90YY(1)(b) of the Family Law Act, the value of the *non-member spouse's* entitlement for the *superannuation interest* is to be calculated for the particular time in accordance with Part 3 of Schedule 2.

Subdivision B—New deferred annuity established, or amount transferred or rolled over or paid, by trustee of deferred annuity in satisfaction of non-member spouse's entitlement under agreement or order

Section 30 – Requirements of this Subdivision

142. Section 30 provides that the requirements of Subdivision B of Division 4 are met for a *non-member spouse's* entitlement under an agreement or order in respect of a *superannuation interest* if section 31 applies for the interest, where the interest is a *percentage-only interest* in a *superannuation annuity* that is a *deferred annuity*.
143. A legislative note under section 30 directs the reader to subsections 31(1), (2), (3) or (5) to see if section 31 applies.
144. A *deferred annuity* is defined in section 4 of the 2025 Regulations as an annuity that is not presently payable. A *superannuation annuity* is defined in section 4 of the 2025 Regulations to have the meaning given by subsection 995-1(1) of the ITAA.

Section 31 – Circumstances when this Subdivision applies

145. Section 31 provides four circumstances when Subdivision B of Division 4 applies for a *percentage-only interest* in a *superannuation annuity* that is a *deferred annuity*, where the *trustee* has paid an amount to the *non-member spouse* (where the *non-member spouse* has reached a condition of release), rolled over or transferred an amount to another superannuation plan for the benefit of the *non-member spouse*, or established a new *deferred annuity* for the *non-member spouse*. These circumstances are where the *trustee* has, in respect of the *non-member spouse's* entitlement under the agreement or order:

- paid an amount to the *non-member spouse* with at least the value of the *non-member spouse*'s entitlement for the interest at the time the payment is made, where the *non-member spouse* has satisfied a condition of release in relation to the interest, where the interest is in the *growth phase* (subsection 31(1))
 - transferred or rolled over to a *superannuation fund* or an *RSA* an amount to be held for benefit of the *non-member spouse* with at least the value of the *non-member spouse*'s entitlement for the interest at the time the transfer or rollover occurs, where the interest is in the *growth phase* (subsection 31(2))
 - established a new *deferred annuity* that provides for the payment of benefits to the *non-member spouse*, that commences no earlier than the time when Part 6 of the SIS Regulations permits or requires benefits be paid as if the new *deferred annuity* were an *approved deposit fund*, where the new *deferred annuity* has a value that is equal to the *non-member spouse*'s entitlement for the interest at the time the new *deferred annuity* is established, where the interest is in the *growth phase* (subsection 31(3)), or
 - established a new annuity for the benefit of the *non-member spouse*, that is a non-commutable income stream within the meaning of the SIS Regulations and has value that is equal to the *non-member spouse*'s entitlement under the agreement or order at the time the new annuity is established, where the interest is in the *growth phase* (subsection 31(5)). The expression 'non-commutable income stream' is defined in regulation 6.01 of the SIS Regulations for the purposes of Part 6 of those regulations.
146. Subsection 31(4) provides for how and when a new *deferred annuity* is taken to be established for the *non-member spouse*'s benefit, for the purposes of subsection 31(3). The *trustee* makes an agreement with the *non-member spouse* to provide a *deferred annuity* for the *non-member spouse*'s benefit, and the new *deferred annuity* is taken to have been established at the date of that agreement. This subsection supports the operation of subsection 31(3) by providing for how and when a *trustee* is taken to have established a new *deferred annuity* for the benefit of the *non-member spouse*. This subsection is not intended to limit subsection 31(3).
147. Subsection 31(6) provides for how and when a new *deferred annuity* that is a non-commutable income stream is established for the benefit of the *non-member spouse*. That is, the *trustee* will either make an agreement with the *non-member spouse* to provide such an annuity for the *non-member spouse*'s benefit, or will pay to another *annuity provider* the value of the *non-member spouse*'s entitlement for the interest at the time the payment is made, for the purpose of providing such an annuity for the *non-member spouse*'s benefit. The new annuity will be established on either the date of the agreement, or the date the *trustee* makes a payment to another *annuity provider*. This subsection supports the operation of subsection 31(5) and is not intended to limit that subsection.
148. Subsection 31(7) provides that, for the avoidance of doubt, none of the subsections of section 31 require the *trustee* of a *superannuation annuity* to do something mentioned in the subsections. This clarifies that a *trustee* may elect to do any of the things in the subsections in satisfaction of the *non-member spouse*'s entitlement for the interest under the agreement or order, and in lieu of splitting each *splittable*

payment as it becomes payable to the *member spouse*. If a *trustee* elects not to do any of the things mentioned in section 31, and if there are no other relevant circumstances that render payments in respect of the interest as not *splittable payments*, then the *trustee* must instead calculate the *non-member spouse's* entitlement from each *splittable payment* as it becomes payable to the *member spouse*, in accordance with the Family Law Act and the 2025 Regulations.

Section 32 – Meaning of *value of the non-member spouse's entitlement*

149. Section 32 defines, for the purposes of Subdivision B of Division 4, the expression ***value of the non-member spouse's entitlement*** for the *superannuation interest* at the time, defined as the ***termination time***, when the *trustee* carries out one of the actions described in subsection 31(1), (2), (3) or (5).
150. Section 32 provides that the value of the entitlement is equal to the account balance of the *superannuation annuity* at the termination time, multiplied by the percentage specified in the agreement or order, minus any fees payable by the *non-member spouse* under section 98.

Subdivision C—New annuity established or amount transferred or rolled over or paid by trustee of a superannuation annuity (other than under Subdivision B) in satisfaction of non-member spouse's entitlement under agreement or order

Section 33 – Requirements of this Subdivision

151. Section 33 provides that the requirements of Subdivision C of Division 4 are met for a *non-member spouse's* entitlement under an agreement or order in respect of a *superannuation interest* if section 34 applies for the interest, where the interest is a *percentage-only interest* in a *superannuation annuity* that is either an *allocated annuity*, a *market linked annuity*, a *fixed term annuity* or a lifetime annuity, including an annuity that is payable for the lives of more than one person.
152. A legislative note under section 33 directs the reader to subsections 34(1), (2) or (3) to see if section 34 applies.

Section 34 – Circumstances when this Subdivision applies

153. Section 34 provides three circumstances when Subdivision C of Division 4 applies for a *percentage-only interest* in a *superannuation annuity* listed in paragraph 33(a), where the *trustee* has paid an amount to the *non-member spouse* (where the *non-member spouse* has reached a condition of release), rolled over or transferred an amount to another superannuation plan for *non-member spouse's* benefit, or established a new annuity for the *non-member spouse's* benefit. These circumstances are where the *trustee* has, in respect of the *non-member spouse's* entitlement under the agreement or order:
- paid an amount to the *non-member spouse* with at least the value of the *non-member spouse's* entitlement for the interest at the time the payment is made, where the interest is in the *payment phase* (subsection 34(1))
 - transferred or rolled over to a *superannuation fund* or an *RSA* an amount to be held for the benefit of the *non-member spouse* with at least the value of the *non-member spouse's* entitlement for the interest at the time the transfer or rollover occurs, where the interest is in the *payment phase* (subsection 34(2)), or

- established a new annuity that is either an *allocated annuity*, a *market linked annuity*, a *fixed term annuity* or a lifetime annuity for the *non-member spouse's* benefit, that has a value that is equal to the *non-member spouse's* entitlement for the interest at the time the new annuity is established, where the interest is in the *payment phase* (subsection 34(3)).
154. Subsection 34(4) provides for how and when a new annuity is taken to be established for the *non-member spouse's* benefit, for the purposes of subsection 34(3). That is, the *trustee* makes an agreement with the *non-member spouse* to provide a *deferred annuity* for the *non-member spouse's* benefit, and the new annuity will be taken to have been established at the date of that agreement. This subsection supports the operation of subsection 34(3) and is not intended to limit that subsection.
155. Subsection 34(5) provides that, for the avoidance of doubt, none of the subsections of section 34 require the *trustee* of a *superannuation annuity* to do something mentioned in the subsections. This clarifies that a *trustee* may elect to do any of the things in the subsections in satisfaction of the *non-member spouse's* entitlement for the interest under the agreement or order, and in lieu of splitting each *splittable payment* as it becomes payable to the *member spouse*. If a *trustee* elects not to do any of the things mentioned in section 34, and if there are no other relevant circumstances that render payments in respect of the interest as not *splittable payments*, then the *trustee* must instead calculate the *non-member spouse's* entitlement from each *splittable payment* as it becomes payable to the *member spouse*, in accordance with the Family Law Act and the 2025 Regulations.

Section 35 – Meaning of *value of the non-member spouse's entitlement*

156. Section 35 defines, for the purposes of Subdivision C of Division 4, the expression ***value of the non-member spouse's entitlement*** for the *superannuation interest* at the time, defined as the ***termination time***, when the *trustee* carries out one of the actions described in subsection 34(1), (2) or (3).
157. Subsection 35(2) provides that, for a *superannuation interest* that is in an *allocated annuity* or *market linked annuity*, the value of the entitlement is equal to the account balance of the *superannuation annuity* at the termination time, multiplied by the percentage specified in the agreement or order, minus any fees payable by the *non-member spouse* under section 98.
158. Subsection 35(3) provides that, for a *superannuation interest* that is in a fixed term or lifetime annuity, the value of the entitlement is to be calculated using a particular formula, subject to whether the Minister has approved, under section 70, a method or factors for determining the gross value of the interest, as follows:
- if the Minister has not approved such a method or factors, the value of the entitlement is equal to the value of the interest calculated under Schedule 9 (for fixed term annuities) or 6 (for lifetime annuities) as applicable at the termination time, multiplied by the percentage specified in the agreement or order, minus any fees payable by the *non-member spouse* under section 98 (subsection 35(3)).
 - if the Minister has approved such a method or factors, the value of the entitlement is equal to the value of the interest calculated using the approved method or factors at the termination time, multiplied by the percentage

specified in the agreement or order, minus any fees payable by the *non-member spouse* under section 98 (subsection 35(4)).

159. Under the 2001 Regulations, the valuation methods and factors contained in the 2001 Regulations are not to be used to value *percentage-only interests*, and the 2001 Regulations do not provide for the Minister to approve a method or factors for the purpose of valuing a *percentage-only interest*. Where the Family Law Act requires the court to determine an amount in relation to a *percentage-only interest*, this is ordinarily done by submitting expert valuation evidence to the court.
160. The 2025 Regulations provide for the Minister to approve a method or factors for the purpose of valuing a *percentage-only interest*, should a *trustee* of an interest wish to prepare and submit a method or factors for the Minister's approval. This increases the efficiency and consistency of the superannuation payment splitting framework under the Family Law Act and the 2025 Regulations. Subsection 35(4) ensures that, where a method or factors have been approved for the annuity, that method or factors are used to determine the value of the interest, for the purpose of determining the value of the *non-member spouse's* entitlement for the interest.

Division 5—When the payment by the member spouse is in satisfaction of the non-member spouse's entitlement under agreement or order

Section 36 – Requirements of this Division

161. Section 36 provides that the requirements of Division 5 are met for a *non-member spouse's* entitlement under an agreement or order in respect of a *superannuation interest* if subsection 36(2) or (3) applies for the interest.
162. Paragraph 36(2) applies for the interest if the interest is in a *regulated superannuation fund*, an *exempt public sector superannuation scheme*, an *approved deposit fund*, an *RSA* or a *superannuation annuity*, the interest was in the *growth phase* at the time of the payment mentioned below, a notice in accordance with Form 1 of Schedule 1, signed by the *non-member spouse*, has been served on the *trustee*, and the member spouse has either:
- paid an amount to the *non-member spouse* in satisfaction of the *non-member spouse's* entitlement in respect of the interest, where the *non-member spouse* has satisfied a *relevant condition of release* in relation to the interest, or
 - paid an amount to another *regulated superannuation fund*, *exempt public sector superannuation scheme* or an *RSA* to be held for the benefit of the *non-member spouse*, in satisfaction of the *non-member spouse's* entitlement in respect of the interest.

Part 4—Payment splitting or flagging by agreement

163. Part 4 provides for how to calculate the *non-member spouse's* entitlement from each *splittable payment* from an *eligible superannuation interest* under a *superannuation agreement* or *flag lifting agreement*.

Division 1—Superannuation interest that is not a percentage-only interest

Section 37 – Application of this Division—agreements specifying a base amount or method for calculating a base amount

164. Subsection 37(1) provides that Division 1 applies to a *payment split* under an agreement in relation to a *superannuation interest* that is not a *percentage-only interest*, and that specifies an amount or a method in accordance with subparagraph 90XJ(1)(c)(i) or (ii), or subparagraph 90YN(1)(c)(i) or (ii) of the Family Law Act.
165. A legislative note under the subsection clarifies that paragraph (b) means the agreement identifies a *base amount*, or a method to calculate a *base amount*, for the interest.
166. Subsection 37(2) provides that Division 1 enables the calculation of the *non-member spouse's* entitlement for each *splittable payment* payable for the interest, for the purposes of paragraphs 90XJ(4)(b) or 90YN(4)(b) of the Family Law Act. Those paragraphs require an amount to be calculated in accordance with the 2025 Regulations.

Section 38 – Entitlement of non-member spouse under the agreement—superannuation interest not in existence or in growth phase

167. Section 38 provides that the calculation of the *non-member spouse's* entitlement from each *splittable payment* for an interest that is not a *small superannuation accounts interest*, and that is not in existence at the date of the agreement, or is in the *growth phase* at the date of the agreement and is not in the *payment phase* at the date when the agreement is served on the *trustee*, is to be calculated under Division 2 of Part 7.
168. This section does not apply to *small superannuation accounts interests*, as *splitting orders*, superannuation agreements and *flag lifting agreements* for those interests are implemented in accordance with the Small Super Accounts Regulations.

Section 39 – Entitlement of non-member spouse under the agreement—superannuation interest in payment phase

169. Section 39 provides that the calculation of the *non-member spouse's* entitlement from each *splittable payment* for an interest that is not a *small superannuation accounts interest*, and that is in the *payment phase* at the date when the agreement is served on the *trustee*, is to be calculated under Division 3 of Part 7.
170. This section does not apply to *small superannuation accounts interests*, as *splitting orders*, superannuation agreements and *flag lifting agreements* for those interests are implemented in accordance with the Small Super Accounts Regulations.

Division 2—Superannuation interest that is a percentage-only interest

Section 40 – Application of this Division—agreements specifying a percentage

171. Subsection 40(1) provides that Division 2 applies to a *payment split* under an agreement in relation to a *superannuation interest* that is a *percentage-only interest*, and that specifies a percentage under subparagraphs 90XJ(1)(b)(i) or 90YN(1)(b)(i) of the Family Law Act.

172. Subsection 40(2) provides that Division 2 enables the calculation of the *non-member spouse's* entitlement for each *splittable payment* payable for the interest, for the purposes of paragraphs 90XJ(4)(b) or 90YN(4)(b) of the Family Law Act. Those paragraphs require an amount to be calculated in accordance with the 2025 Regulations.

Section 41 – Entitlement of non-member spouse under the agreement—splittable payment payable in respect of superannuation interest (other than an interest in a superannuation annuity)

173. Section 41 provides the formula to calculate the *non-member spouse's* entitlement under an agreement from each *splittable payment* for a *percentage-only interest* that is not in a *superannuation annuity*. The entitlement is calculated by dividing the accrued benefit multiple at separation by the accrued benefit multiple at payment, multiplying that number by the percentage in the agreement, and then by the amount of the *splittable payment*.
174. The *accrued benefit multiple at separation* is defined for this section as the *member spouse's* accrued benefit multiple, as defined in the governing rules of the plan in which the interest is held, at the date when the *member spouse* and *non-member spouse* separated or at the date of the most recent separation if applicable.
175. The *accrued benefit multiple at payment* is defined for this section as the *member spouse's* accrued benefit multiple as defined in the governing rules of the plan in which the interest is held, at the date when the *splittable payment* becomes payable for the interest.
176. The *agreement percentage* is defined for this section to mean the percentage specified in the agreement.
177. The *splittable payment* is defined for this section to mean the amount of the *splittable payment*.

Section 42 – Entitlement of non-member spouse under the agreement—splittable payment payable in respect of interest in a superannuation annuity

178. Section 42 provides the formula to calculate the *non-member spouse's* entitlement for an interest in a *superannuation annuity*. The entitlement is calculated by multiplying the amount of the *splittable payment* by the percentage in the agreement.
179. The *agreement percentage* is defined for this section to mean the percentage specified in the agreement.
180. The *splittable payment* is defined for this section to mean the amount of the *splittable payment*.

Part 5—Payment splitting or flagging by court order

181. Part 5 provides for how to calculate the *non-member spouse's* entitlement from each *splittable payment* from an *eligible superannuation interest* under a *splitting order*.

Division 1—Simplified outline

Section 43 – Simplified outline of this Part

182. Section 43 provides a simplified outline of Part 5.

Division 2—All superannuation interests

Subdivision A—Determining the value of the superannuation interest of the member spouse

183. Subdivision A provides for how the value of the *member spouse's* interest is to be determined for certain *superannuation interests*.

Section 44 – Determining the value of certain superannuation interests of member spouses

184. Subsection 44(1) provides that, for the purposes of paragraphs 90XT(2)(a) or 90YY(2)(a) of the Family Law Act, the court must determine an amount in relation to certain *superannuation interests* as follows:

- for an interest in the *growth phase* at the *relevant date*, using Division 1 of Part 6 of the 2025 Regulations, and
- for an interest in the *payment phase* at the *relevant date*, using Division 2 of Part 6 of the 2025 Regulations.

185. Subsection 44 (2) provides that subsection 44(1) does not apply if the interest is a *small superannuation accounts interest*, an interest in a *self managed superannuation fund*, or an interest in a *regulated superannuation fund* in relation to which the *trustee* has given notice under the Corporations Act that the fund is to be reconstructed or terminated.

186. Subsection 44(1) does not apply to *small superannuation accounts interests*, as *splitting orders*, *superannuation agreements* and *flag lifting agreements* as those interests are implemented in accordance with the Small Super Accounts Regulations.

187. Subsection 44(1) does not apply to an interest in a *self managed superannuation fund* or an interest in a *regulated superannuation fund* in relation to which the *trustee* has given a notice under the Corporations Act of reconstruction or termination, as the 2025 Regulations do not provide a method for determining an amount in relation to these interests, and their value is instead determined by the court on the basis of evidence led by the parties in the proceedings.

188. Subsection 44(1) does not apply to these interests because it is inappropriate to use the provisions in Part 6 to value these particular types of interest. The value of small superannuation accounts is determined under section 45 and the value of an interest in a *self managed superannuation fund* is determined by such method as the court considers appropriate.

189. There are three legislative notes to assist readers to understand the operation of section 44:

- The first note provides that the determination in subsection 44(1) is taken to be the value of the interest under subsection 90XT(2A) or 90YY(3) of the Family Law Act, and that the court must make such a determination before it makes an order under subsection 90XT(1) or 90YY(1) of the Family Law Act.
- The second note signposts for readers that section 45 of the 2025 Regulations provides for how to determine the value of a *small superannuation accounts interest*.

- The third note clarifies that for the *superannuation interests* mentioned in paragraphs 44(2)(b) and (c), the court will value the member’s interest using a method the court considers appropriate in accordance with paragraph 90XT(2)(b) or 90YY(2)(b) of the Family Law Act.

Section 45 – Determining the value of small superannuation accounts interests of member spouses

190. Subsection 45(1) provides that section 45 applies for an interest that is a *small superannuation accounts interest*.
191. Subsection 45(2) provides that the court must determine an amount in relation to the interest for the purposes of paragraph 90XT(2)(a) or 90YY(2)(a) of the Family Law Act, and that the amount is the account balance at the *relevant date* that the Commissioner of Taxation is required to transfer to a specified *RSA* or the *trustee* of a complying fund, for the benefit of the member spouse, if the Commissioner had received a transfer request from the *member spouse* under the Small Super Accounts Act.
192. A legislative note provides that the determination in subsection 45(2) is taken to be the value of the interest under subsection 90XT(2A) or 90YY(3) of the Family Law Act, and that the court must make such a determination before it makes a *splitting order* under subsection 90XT(1) or 90YY(1) of the Family Law Act.
193. Subsection 45(3) defines *complying fund* to mean a fund that passes the compliance test in subsection 61(2) of the Small Super Accounts Act.

Subdivision B—Calculating the amount the non-member spouse is entitled to be paid in respect of certain superannuation interests of the member spouse

194. Subdivision B provides the Divisions of the 2025 Regulations that are used to calculate the *non-member spouse’s* entitlement from each *splittable payment* for certain *superannuation interests*.

Section 46 – Entitlement of non-member spouse under a splitting order—interests other than percentage-only interests and small superannuation accounts interests

195. Section 46 provides that, for the purposes of subparagraphs 90XT(1)(a)(i) or 90YY(1)(a)(i) of the Family Law Act, for a *superannuation interest* that is not a *percentage-only interest* and is not a *small superannuation accounts interest*, the amount of the *non-member spouse’s* entitlement under a *splitting order* from each *splittable payment* is to be calculated as follows:
 - for an interest in the *growth phase* at the *relevant date* of the *splitting order*, using Division 2 of Part 7 of the 2025 Regulations, and
 - for an interest in the *payment phase* at the date of the *splitting order*, using Division 3 of Part 7 of the 2025 Regulations.

Division 3—Superannuation interest that is a percentage-only interest

Section 47 – Application of this Division

196. Section 47 provides that this Division sets out how to calculate the *non-member spouse’s* entitlement from each *splittable payment* for a *superannuation interest* that

is a *percentage-only interest* for the purposes of subparagraph 90XT(1)(c)(i) or 90YY(1)(c)(i) of the Family Law Act.

197. A legislative note states that a *percentage-only interest* is defined by section 11 of the 2025 Regulations, and that it includes a *superannuation interest* in a *superannuation annuity*.

Section 48 – Entitlement of non-member spouse under the order—superannuation interest (other than an interest in a superannuation annuity)

198. Section 48 provides the formula for calculating the *non-member spouse's* entitlement under a *splitting order* from each *splittable payment* for a *percentage-only interest* that is not an interest in a *superannuation annuity*. The entitlement is calculated by dividing the accrued benefit multiple at separation by the accrued benefit multiple at payment, multiplying that number by the percentage in the *splitting order*, and then by the amount of the *splittable payment*.
199. The *accrued benefit multiple at separation* is defined for this section as the *member spouse's* accrued benefit multiple as defined in the governing rules of the plan in which the interest is held, at the date when the *member spouse* and *non-member spouse* separated or at the date of the most recent separation if applicable.
200. The *accrued benefit multiple at payment* is defined for this section as the *member spouse's* accrued benefit multiple as defined in the governing rules of the plan in which the interest is held, at the date when the *splittable payment* becomes payable for the interest.
201. The *splitting order percentage* is defined for this section to mean the percentage specified in the *splitting order*.
202. The *splittable payment* is defined for this section to mean the amount of the *splittable payment*.

Section 49 – Entitlement of non-member spouse under the order—superannuation interest in a superannuation annuity

203. Section 49 provides the formula for calculating the *non-member spouse's* entitlement under a *splitting order* from each *splittable payment* for a *percentage-only interest* in a *superannuation annuity*. The entitlement will be calculated by multiplying the amount of the *splittable payment* by the percentage in the *splitting order*.
204. The *splitting order percentage* is defined for this section to mean the percentage specified in the *splitting order*.
205. The *splittable payment* is defined for this section to mean the amount of the splittable payment.

Part 6—Determining the value of certain superannuation interests of member spouses

Division 1—Determining the value of superannuation interests in the growth phase at the relevant date

Section 50 – Simplified outline of this Division

206. This section provides a simplified outline of the Division.

207. A legislative note under the outline explains that the Division does not apply to certain kinds of interests, including interests covered by subsection 44(2). Interests covered by subsection 44(2) include a *small superannuation accounts interest*, an interest in a *self managed superannuation fund*, or an interest in a *regulated superannuation fund* where a *trustee* has given notice that the fund be reconstructed or terminated. This is because Part 6 does not set out appropriate valuation pathways for these types of *superannuation interests*.

Section 51 – Determining the value of superannuation interests in the growth phase at the relevant date

208. Section 51 provides for the method for determining the value of a *superannuation interest* in the *growth phase*. The method is to determine the gross value of the interest, in accordance with whichever of the particular sections in Division 1 of Part 6 applies to the interest, and to deduct from that amount the value of any earlier payment split, and any applicable *surcharge* debt at the time the interest is being valued.
209. The table at the end of section 51 acts as a guide to the remainder of the Division and sets out for different types of *superannuation interests*, the relevant sections to calculate that interest's gross value. For example, the gross value of a *superannuation interest* that is a *partially vested accumulation interest* is calculated under section 55.
210. By operation of the definition of ***gross value of the superannuation interest at the relevant date*** under section 51, the gross value of a *percentage-only interest* is calculated under section 61 and the gross value of an *innovative superannuation interest* (that is not a percentage only interest) is calculated under section 60 (these interests are not included in the table at the end of section 51). This provision is necessary in circumstances where an interest could be considered both a *percentage-only interest* and an *innovative superannuation interest*. This provision ensures only one legislative pathway exists to determine the value of these types of interests.

Section 52 – Gross value—most defined benefit interests

211. Subsection 52(1) along with Schedule 3, provides for the method for determining the gross value of an interest that is a *defined benefit interest* in the *growth phase*, unless it is a *defined benefit interest* that falls under item 2 of the table at section 51.

Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors

212. If the Minister has approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 52(2) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:
- issued by the *trustee* of the plan, and
 - sets out the gross value of the interest using the approved methods or factors.

Minister has not approved any methods or factors, and there is evidence that the trustee has used the method in Schedule 3

213. If the Minister has not approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 52(3) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:

- issued by the *trustee* of the plan, and
- sets out the gross value of the interest using the method set out in Schedule 3.

There is no evidence before the court of the contents of a statement referred to in paragraph (2)(b) or (3)(b)

214. Subsection 52(4) provides how to calculate the *member spouse's* gross value if there is no evidence before a court in the form of a statement issued by the *trustee* of the plan. In these circumstances, the value is to be calculated using:

- certain methods or factors approved by the Minister under section 62 of the 2025 Regulations (if any are approved), or otherwise
- the method in Schedule 3 of the 2025 Regulations.

Approval of retirement age

215. Subsection 52(5) empowers the Minister to approve, by legislative instrument, for the purposes of determining the gross value of a *defined benefit interest*, a retirement age for a defined benefit superannuation plan that is different to the retirement age in the rules of the plan, or the age of 65 years. The retirement age is a relevant factor in determining the gross value of a *defined benefit interest*.

216. A legislative note under the subsection explains that *eligible superannuation plans* may be specified by class, and refers to subsection 13(3) of the *Legislation Act 2003*.

Section 53 – Gross value—accumulation interest (other than a partially vested accumulation interest): more straight-forward cases

217. Subsection 53(1) provides that this section applies when item 3 of the table in section 51 applies to the *superannuation interest*. Item 3 in the table signposts to this section when the whole of the *superannuation interest* is an *accumulation interest* (that is not a partially vested interest).

218. Section 53 provides two alternative methods for determining the gross value of an interest that is an *accumulation interest* in the *growth phase*, unless it is a *partially vested accumulation interest*. *Accumulation interests* make up the majority of *superannuation interests* and therefore, this provision is likely to be relevant for most parties seeking to split their *superannuation interests*.

There is evidence from the trustee of the value of gross benefits that would be payable if the member spouse were to cease being a member at the relevant date

219. Subsection 53(2) provides that if there is a statement issued by the *trustee* for the *member spouse's accumulation interest*, that is in evidence before a court exercising family law jurisdiction, then the value set out in that statement is the gross value of the interest. The value will be the interest, before any taxes or charges are deducted,

that would have been payable at a date when the spouse ceases being a member of the fund.

There is evidence of a member statement setting out the value of the superannuation interest at the relevant date

220. Subsection 53(3) provides an alternative approach to determining the gross value of the member spouse in the *accumulation interest*. If subsection 53(2) does not apply, the gross value will be determined by the value of the interest at the *relevant date*, set out on a *member information statement*, tendered as evidence before the court, provided that statement has been provided to the member spouse. A *member information statement* is defined in section 4 as a statement issued periodically to the member by the *trustee* that sets out information about the value of the member's *superannuation interest* in the plan.

Section 54 – Gross value—accumulation interest (other than a partially vested accumulation interest): other cases

221. Subsection 54 (1) provides that this section applies when item 3 of the table in section 51 (*accumulation interests*) applies for the interest and neither subsections 53 (2) or (3) apply to the *superannuation interest*. This clarifies that the section applies to an *accumulation interest* where there is no evidence of a statement issued by the *trustee* with the value of the gross benefits that would be payable if the member spouse were to cease being a member at the *relevant date*, or any evidence of a *member information statement* setting out the interest's value at the *relevant date*.
222. Subsection 54(2) sets out the four scenarios that are covered by the formula in subsection 54(3) to determine the gross value of the superannuation interest at the relevant date. The scenarios depend on what evidence is before the court and covers situations where there:
- is only 1 *member information statement*, and it predates the *relevant date*
 - are 2 *member information statements* and the *relevant date* is between the two dates of these *member information statements*
 - is only 1 *member information statement*, and it was issued after the *relevant date*, or
 - are no *member information statements* before the courts.
223. Subsection 54(3) provides a value for a particular date where a member may only have a statement of value either side of the required date. This method uses a technique known as linear interpolation. Where the method is a date in the past, the method will enable the court to determine the gross value by reference to past *member information statements*, interpolating (if necessary) on a daily basis between the value stated in such statements, taking into account any partial payment of benefits and any transfer or roll in of benefits (other than regular contributions) to or by the member.
224. Legislative notes explain that some of the terms in the formula at subsection 54(3) are defined in subsections 54(4) and (5).

225. Subsection 54(4) provides definitions for *first valuation date*, *second valuation date* and *value of the interest at the second valuation date* that are based on the circumstances described in subsection 54(2).

226. Subsection 54(5) provides the following defined terms:

- ***Related valuation amount*** means an amount payable under an earlier payment split or the amount of any *surcharge* debt for the *member spouse's* interest. A *surcharge* debt was levied on certain superannuation contributions between the 1997-2005 financial years and must be paid for any charges raised in this period.
- ***Valuation date*** means the date in the information statement as at which the value is stated for the *member spouse's* interest.
- ***Value*** means the value stated in the information statement for the *member spouse's* interest. If there are two or more values in the statement, the 'value' is the benefits that would have been payable if the member spouse had voluntarily ceased being a member of their superannuation plan at the date at which the value is stated.

227. A legislative note under subsection 54(5) explains that a value can be described differently in different *member information statements*. This is because different superannuation schemes may use different terminology to describe what is equivalent to the value of a particular member's *superannuation interest*.

Section 55 – Gross value—partially vested accumulation interest

228. Subsection 55(1) provides the method for determining the gross value of an interest that is a *partially vested accumulation interest* (item 4 of the table at section 51).

Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors

229. If the Minister has approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 55(2) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:

- issued by the *trustee* of the plan, and
- sets out the gross value of the interest using the approved method or factors.

Minister has not approved any methods or factors, and there is evidence that the trustee has used the method set out in Schedule 4

230. Schedule 4 of the 2025 Regulations provides for the method for determining the gross value at a *relevant date* of a *partially vested accumulation interest* that is in the *growth phase*.

231. If the Minister has not approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 55(3) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:

- issued by the *trustee* of the plan, and

- sets out the gross value of the interest using the method set out in Schedule 4.

There is no evidence before the court of the contents of a statement referred to in paragraph (2)(b) or (3)(b)

232. Subsection 55(4) provides how to calculate the *member spouse's* gross value if there is no evidence before a court in the form of a statement issued by the *trustee* of the plan. In these circumstances, the value is to be calculated using:

- certain methods or factors approved by the Minister under section 62 of the 2025 Regulations (if any are approved), or otherwise
- the method set out in Schedule 4 of the 2025 Regulations.

233. Schedule 4 of the 2025 Regulations provides the method for determining the gross value at a *relevant date* of a *partially vested accumulation interest* that is in the *growth phase*.

Section 56 – Gross value—superannuation interest consists of several components

234. Subsection 56(1) provides that this section applies to calculate the gross value of a *superannuation interest* that consists of two or more *components*. This might include an interest that has both a defined benefit *component* and a partially vested accumulation *component* or an interest that has both a defined benefit *component* and an *accumulation interest*. Item 5 of the table at section 51 signposts to this section.

235. The term '*component of a superannuation interest*' is defined at section 5.

Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors

236. If the Minister has approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 56(2) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:

- issued by the *trustee* of the plan, and
- sets out the gross value of the interest using the approved method or factors.

Otherwise

237. If the Minister has not approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 56(3) provides that the gross value of the *superannuation interest* is the sum of the gross value of each *component* of the *superannuation interest*.

238. The subsection directs that the value of each *component* should be determined under the provision of this Division that applies if the *component* itself was the whole *superannuation interest*.

Section 57 – Gross value—the benefit in respect of the superannuation interest is the greater of a defined benefit interest and an accumulation interest (other than a partially vested accumulation interest)

239. Subsection 57(1) provides that this section applies to a *superannuation interest* when item 6 of the table at section 51 applies. Item 6 in the table signposts to this section

when the benefit in respect of the *superannuation interest* is the greater of a *defined benefit interest* and an *accumulation interest* (other than a partially vested interest). This provision caters for benefit designs that use a “greater of” test to determine a member’s benefit.

240. Subsection 57(2) provides that the *member spouse’s* gross value at the *relevant date* is the greater of the gross value of the *defined benefit interest* determined under section 52, and the gross value of the *accumulation interest* as determined under section 53 or 54 of the 2025 Regulations.

Section 58 – Gross value—the benefit in respect of the superannuation interest is the lesser of a defined benefit interest and an accumulation interest (other than a partially vested accumulation interest)

241. Subsection 58(1) provides that this section applies to a *superannuation interest* when item 7 of the table at section 51 applies. Item 7 in the table signposts to this section when the benefit in respect of the *superannuation interest* is the lesser of a *defined benefit interest* and an *accumulation interest* (other than a partially vested interest). This provision caters for benefit designs that use a “lesser of” test to determine a member’s benefit.
242. Subsection 58(2) provides that the *member spouse’s* gross value at the *relevant date* is the lesser of the gross value of the *defined benefit interest* determined under section 52, and the gross value of the *accumulation interest* determined under section 53 or 54 of the 2025 Regulations.

Section 59 – Gross value—the superannuation interest is a defined benefit interest, the benefit in respect of which is a defined benefit amount less another amount

243. Subsection 59(1) provides that this section applies to a *superannuation interest* when item 2 of the table at section 51 applies. Item 2 in the table signposts to this section when the whole of the *superannuation interest* is a *defined benefit interest* with the difference between the interest and another amount as calculated under the governing rules of the *eligible superannuation plan*.
244. Subsection 59(2) provides that the *member spouse’s* gross value is the difference of the gross value of the *defined benefit interest* as determined under section 52, and the value of the other amount as calculated under the governing rules of the *eligible superannuation plan* (excluding any *surcharge* the *trustee* is liable to pay).
245. Subsection 59(3) clarifies that if the value of the other amount could be calculated using a method in Division 1 of Part 6, the value is to be determined using that method.

Section 60 – Gross value—innovative superannuation interest

246. Subsection 60(1) provides that this section applies to a *superannuation interest* if the whole of the interest is an *innovative superannuation interest*, in *growth phase*, that is not a *percentage-only interest*.
247. *Innovative superannuation interests* are a category of lifetime superannuation products established under regulation 1.06A of the SIS Regulations. They are a recent type of product aimed to provide consumers with greater choice and flexibility in retirement product options. They cover a range of lifetime products that did not meet the annuity and *pension* standards prior to 1 July 2017. Benefits with respect to

an *innovative superannuation interest* may take the form of either a *pension* or annuity payments.

248. This provision only applies to *innovative superannuation interests* that are in the form of a *pension*. *Innovative superannuation interests* that are annuities, fall within the definition of *percentage-only interests*, and are captured under section 61 of the 2025 Regulations.

Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors

249. If the Minister has approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 60(2) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:
- issued by the *trustee* of the plan, and
 - sets out the gross value of the interest using the approved methods or factors.

Minister has not approved any methods or factors, and there is evidence that the trustee has used the method set out in Schedule 3

250. Schedule 3 of the 2025 Regulations provides for the method for determining the gross value at a *relevant date* of an *innovative superannuation interest* that is in the *growth phase*.
251. If the Minister has not approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 60(3) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:
- issued by the *trustee* of the plan, and
 - sets out the gross value of the interest using the method set out in Schedule 3.

There is no evidence before the court of the contents of a statement referred to in paragraph (2)(b) or (3)(b)

252. Subsection 60(4) provides how to calculate the *member spouse's* gross value if there is no evidence before a court in the form of a statement issued by the *trustee* of the plan. In these circumstances, the value is to be calculated using:
- certain methods or factors approved by the Minister under section 62 of the 2025 Regulations (if any are approved), or otherwise
 - the method in Schedule 3 of the 2025 Regulations.
253. Schedule 3 of the 2025 Regulations provides for the method for determining the gross value at a *relevant date* of an *innovative superannuation interest* that is in the *growth phase*.
254. The use of Schedule 3 as a way of valuing an *innovative superannuation interest* where the Minister has not approved methods or factors under section 62 is necessary to ensure provisions under Parts 3 and 7 are effective. Parts 3 and 7 operate to

determine the value of the *non-member spouse's* entitlement at certain points in time and in some cases require a valuation of the member's interest.

255. *Trustees* cannot be compelled to provide methods or factors, specific to their scheme for the Minister to approve under section 62. Therefore, the 2025 Regulations require valuation of the *innovative superannuation interest* using the methods or factors that apply to *defined benefit interests* to provide a standard method to provide a valuation in circumstances where no approved methods or factors exist under section 62.

Section 61 – Gross value – percentage-only superannuation interest

256. Section 61 applies to calculate the value of a *superannuation interest* that is a *percentage-only interest* in *growth phase*. *Percentage-only interests* are prescribed under section 11 and include a *superannuation interest* in a *superannuation annuity*.

Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors

257. If the Minister has approved one or more methods or factors to be used to determine the gross value of the *superannuation interest* under section 62, subsection 61(2) states that the gross value of the interest is the value set out in a statement, tendered as evidence before the court that is:

- issued by the *trustee* of the plan, and
- sets out the gross value of the interest using the approved methods or factors.

There is no evidence before the court of the contents of a statement referred to in paragraph (2)(b)

258. Subsection 61(3) provides how to calculate the *member spouse's* gross value if there is no evidence before a court in the form of a statement issued by the *trustee* of the plan. In these circumstances, the value is to be calculated using the methods or factors approved by the Minister under section 62 of the 2025 Regulations.

259. If no methods or factors are approved for the *percentage-only interest*, then paragraph 90XT(2)(b) or 90YY(2)(b) of the Family Law Act will apply and the value of the interest will be determined by such method as the court considers appropriate.

Section 62 – Approval of methods and factors for determining gross value of particular superannuation interests

260. Section 62 gives the Minister the power to approve methods or factors to determine the gross value of particular *superannuation interests*. This may be necessary where a *trustee* believes the plan design of their superannuation scheme differs from the assumed design which underpins the default methods or factors contained in the 2025 Regulations. This allows the *trustee* to develop customised valuation methods or factors appropriate for their specific scheme design. These methods or factors must be approved by the Minister before they will apply to the particular *superannuation interests*.

261. Subsection 62(1) identifies the types of *superannuation interests* that may have methods or factors approved by the Minister in a legislative instrument.

262. A legislative note under subsection 62(1) clarifies that due to the way gross value of the superannuation interest at the relevant date is defined, the only provision relevant

for determining the gross value of a *percentage-only interest* that is in the *growth phase* is section 61, and the only provision for determining the gross value of an *innovative superannuation interest* (that is not a *percentage-only interest*) that is in the *growth phase* is section 60.

263. Subsection 62(2) provides for the Minister to approve separate methods or factors for a specific circumstance, *component* or design element for a *superannuation interest* in a superannuation scheme. This provides flexibility for approved methods or factors to be applied to different *superannuation interests* which may exist in a variety of circumstances.
264. Subsection 62(3) identifies the particular provisions in the Family Law Act which empower the making of an instrument under subsection 62(1) of the 2025 Regulations.

Division 2—Determining the value of superannuation interests in the payment phase at the relevant date

Section 63 – Simplified outline of this Division

265. Section 63 provides the simplified outline of the Division.

Section 64 – Determining the value of superannuation interests in the payment phase at the relevant date

266. Section 64 provides the method for determining the value of a *superannuation interest* in the *payment phase*. The method is to determine the gross value of the interest, in accordance with whichever of the particular sections in Division 2 of Part 6 applies to the interest, and to deduct from that amount the value of any earlier payment split. There is no deduction of any *surcharge* debt as any debt would have been satisfied and paid at the time of release of the superannuation.
267. This provision applies for the purposes of paragraph 44(1)(b) of the 2025 Regulations which requires a court to value a *superannuation interest* of a member spouse in the *payment phase* using the provisions in Division 2 of Part 6 of the 2025 Regulations.
268. The table at the end of section 64 provides a guide for determining the gross value of an interest within this Division. For example, the gross value of a *superannuation interest* that is being paid as a *pension* is calculated under section 66.
269. By the operation of the definition of ***gross value of the superannuation interest at the relevant date*** under section 64, the gross value of an *innovative superannuation interest* is calculated under section 68 and the gross value of a *percentage-only interest* is calculated under section 69 (rather than through the table at the end of section 64). This provision is necessary in circumstances where an interest could be considered both a *percentage-only interest* and an *innovative superannuation interest*. This provision ensures only one legislative pathway exists to determine the value of these types of interests.

Section 65 – Gross value—benefits payable only as one or more lump sums

270. Section 65 provides that when item 1 in the table under section 64 applies, the gross value of the *member spouse's superannuation interest* in the *payment phase* is the amount that will be a *withdrawal benefit* at the *relevant date*. Item 1 in the table

under section 64 signposts to this section when the whole, or remaining part of, the *superannuation interest* is payable only as one or more lump sums. *Withdrawal benefit* is a defined term under section 4A.

Section 66 – Gross value—benefits paid as pension

271. Subsection 66(1) provides that this section applies when item 2 in the table under section 64 applies. Item 2 in the table under section 64 signposts to this section when the benefits for the *superannuation interest* are being paid as a *pension* to the member spouse.
272. Section 66 does not cover a *superannuation interest* where benefits are being paid as an account-based *pension*. In this case, paragraph 90XT(2)(b) or 90YY(2)(b) of the Family Law Act applies.

Pension payable for the life of the member spouse

273. Subsection 66(2) applies to calculate the gross value of a *pension* payable for the life of the member spouse. There are three methods available to calculate the gross value of the *pension*:
- using a method or factors approved by the Minister under section 70 of the 2025 Regulations
 - if there is no method or factors approved, and the *pension* is payable due to invalidity, using the method in Schedule 7 of the 2025 Regulations. Schedule 7 of the 2025 Regulations provides the valuation method and factors relevant when a member spouse receives a *pension* due to their invalidity, or
 - if there is no method or factors approved, and the *pension* is not payable due to invalidity, using the method in Schedule 5 of the 2025 Regulations. Schedule 5 of the 2025 Regulations provides the method for when a member spouse receives a *pension* payment otherwise than due to invalidity.
274. It is relevant to separate the methods used for calculating the value of a *pension* that is due to invalidity as these valuation methods and factors account for the fact that members who exit the workforce due to invalidity will experience higher than average rates of mortality, and will ensure that *pensions* payable upon invalidity are valued as accurately as possible.

Pension payable for fixed term (other than market linked pension)

275. Subsection 66(3) provides two methods for determining the gross value of a *superannuation interest* that is being paid as a *pension* for a fixed term, that is not a *market linked pension*:
- using a method or factors approved by the Minister under section 70 of the 2025 Regulations, or
 - if there is no method or factors approved, the method set out in Schedule 8.

Allocated pension

276. Subsection 66(4) provides that the gross value for an *allocated pension* will be the *withdrawal benefit* for the *pension*. *Withdrawal benefit* is a defined term under section 4.

Market linked pension

277. Subsection 66(5) provides that the gross value for a *market linked pension* is the account balance for the *pension*. *Withdrawal benefit* is a defined term under section 4.

Section 67 – Gross value—benefits paid as pension and lump sum also payable

278. Subsection 67(1) provides that this section applies when item 3 in the table under section 64 applies to the *superannuation interest*. Item 3 in the table under section 64 signposts to this section when part of the benefit is being paid to the member spouse as a *pension* and the remaining part is a lump sum that is not a commutation of the *pension*.

279. Subsection 67(2) provides that if the lump sum is payable, the gross value of the *member spouse's* interest will be the sum of the gross value of the *pension* determined under section 66 of the 2025 Regulations and the amount of the lump sum.

280. Subsection 67(3) provides that if the lump sum is payable after the *relevant date*, the gross value will be determined using the method in Schedule 10 of the 2025 Regulations. Schedule 10 sets out the method and factors relevant for determining the gross value of a *superannuation interest* payable as a *pension* and future lump sum.

Section 68 – Gross value—innovative superannuation interests in the payment phase

281. Subsection 68(1) provides that this section applies to a *superannuation interest*, that is an *innovative superannuation interest* in the *payment phase*, that is not a *percentage-only interest*.

282. *Innovative superannuation interests* are a category of lifetime superannuation products established under regulation 1.06A of the SIS Regulations. They are a recent type of product aimed to provide consumers with greater choice and flexibility in retirement product options. They cover a range of lifetime products that did not meet the annuity and *pension* standards prior to 1 July 2017. Benefits with respect to an *innovative superannuation interest* may take the form of either a *pension* or annuity payments. This provision only applies to *innovative superannuation interests* that are in the form of a *pension*. *Innovative superannuation interests* that are annuities, fall within the definition of *percentage-only interests*, and are captured under section 61.

Pension payable for the life of the member spouse

283. Subsection 68(2) calculates the gross value of an *innovative superannuation interest* being paid as a *pension* payable for the life of the member spouse. There are three methods available to calculate the gross value of this interest:

- using a method or factors approved by the Minister under section 70 of the 2025 Regulations
- if there is no method or factors approved, and the *pension* is payable due to invalidity, using the method in Schedule 7 of the 2025 Regulations. Schedule 7 of the 2025 Regulations provides the valuation method and factors relevant when a member spouse receives a *pension* due to their invalidity, or

- if there is no method or factors approved, and the *pension* is not payable due to invalidity, using the method in Schedule 5 of the 2025 Regulations. Schedule 5 of the 2025 Regulations provide the method for when a member spouse receives a *pension* payment otherwise than due to invalidity.

284. It is relevant to separate the methods used for calculating the value of a *pension* that is due to invalidity as these valuation methods and factors account for the fact that members who exit the workforce due to invalidity will experience higher than average rates of mortality, and will ensure that *pensions* payable upon invalidity are valued as accurately as possible.

Pension payable for fixed term (other than market linked pension)

285. Subsection 68(3) provides two methods for determining the gross value of an *innovative superannuation interest* that is being paid as a *pension* for a fixed term, that is not a *market linked pension*:
- using a method or factors approved by the Minister under section 70 of the 2025 Regulations, or
 - if there is no method or factors approved, the method set out in Schedule 8.

Section 69 – Gross value— percentage-only superannuation interests in the payment phase

286. Section 69 calculates the value of a *superannuation interest* that is a *percentage-only interest*.
287. If a method or factors have been approved by the Minister under section 70, the gross value of the *superannuation interest* is to be determined using that method or factors. If no method or factors have been approved, then paragraphs 90XT(2)(b) or 90YY(2)(b) of the Family Law Act will apply and the value of the interest will be determined by such method as the court considers appropriate.

Section 70 – Approval of methods and factors for determining gross value of certain superannuation interests in the payment phase

288. Section 70 provides the Minister with the power to approve methods or factors to be used to determine the gross value of a *superannuation interest* that is in the *payment phase*.
289. This may be necessary where a *trustee* believes the plan design of their superannuation scheme differs from the assumed design which underpins the default methods and factors contained in the 2025 Regulations. This allows the *trustee* to develop a customised valuation method or factors appropriate for their specific scheme design. The methods or factors must be approved by the Minister before they will apply to the specific *superannuation interests*.
290. Subsection 70(1) identifies the types of *superannuation interests* that may have methods or factors approved by the Minister in a legislative instrument.
291. A legislative note clarifies that if the Minister approves a method or factors for a *pension* that is payable for the life of the member spouse, that method or factors must be used instead of the method in Schedules 5 and 7 of the 2025 Regulations.

292. A second legislative note clarifies that if the Minister approves a method or factors for a *pension* that is payable for a fixed term, that method or factors must be used instead of the method in Schedule 8 of the 2025 Regulations.
293. A third legislative note clarifies that due to the way gross value of the superannuation interest at the relevant date is defined, the only provision relevant for determining the gross value of a *percentage-only interest* that is in the *payment phase* will be section 69, and the only provision for determining the gross value of an *innovative superannuation interest* (that is not a *percentage-only interest*) that is in the *payment phase* is section 68.
294. Subsection 70(2) identifies the particular provisions in the Family Law Act which empower the making of an instrument under subsection 70(1) of the 2025 Regulations.

Part 7—Entitlement of non-member spouse in respect of certain superannuation interests

Division 1—Preliminary

Subdivision A—Simplified outline of this Part

Section 71 – Simplified outline of this Part

295. Section 71 provides a simplified outline of the Part. The Part will be used to calculate the amount that a *non-member spouse* is entitled to be paid under a superannuation agreement, *flag lifting agreement* or *splitting order*, from each splittable payment the member spouse receives.

Subdivision B—Definitions

Section 72—Definitions

296. Section 72 provides key terms used in the Part, which are:

- ***Base amount allocated to the non-member spouse*** means, for a *superannuation interest*, the *base amount* for the interest.
- ***Commutation factor*** means, for a *superannuation interest*, a factor that is used to convert to a lump sum, a *pension* that will be payable to the member-spouse or other person, if that *pension* were to be converted in certain circumstances described in paragraph (a) to (d) of the definition. A legislative note identifies that the commutation factor must be provided by the *trustee* when an application for information is made under subsection 90XZB(3) or 90YZR(3) of the Family Law Act. Part 9 in the 2025 Regulations contains provisions about these information requirements that *trustees* must comply with.
- ***Lump sum*** means any amount, other than a *pension* payment, that is paid to a member in respect of a *superannuation interest*. A legislative note provides examples of a lump sum as being a transfer of money, or a rollover of benefits under the SIS Act.
- ***Pension valuation factor*** means, for a *superannuation interest*, a factor that applies to a particular *pension* payable to the member spouse or other person on the date the commutation factor applies to the interest. The *pension* valuation factor may be approved by the Minister under section 70 of the

2025 Regulations in the approved method or factors for the *superannuation interest*. Otherwise, default *pension* valuation factors are provided under Schedules 5, 7 or 8 of the 2025 Regulations where applicable.

Subdivision C—Adjustments to the base amount for superannuation interests in the growth phase

Section 73 – Meaning of *adjusted base amount applicable to the non-member spouse*

297. Subsection 73(1) identifies how to calculate an adjusted *base amount* to the *non-member spouse* at a specific date. This subsection clarifies that to adjust a *base amount*, the number of *applicable adjustment periods* before the date need to be worked out for the interest. The subsection defines any *applicable adjustment periods* as *relevant periods*.
298. There are two legislative notes that clarify that it is only necessary to calculate any *applicable adjustment periods* for an agreement or order that was served on a *trustee* when the *superannuation interest* was in the *growth phase*, and signpost that sections 74 or 75 of the 2025 Regulations identify how to calculate the *applicable adjustment periods*.
299. Subsection 73(2) provides that when there are no relevant periods, the *base amount* will be the *adjusted base amount applicable to the non-member spouse*.
300. Subsection 73(3) identifies how to adjust the *base amount* for relevant periods:
- If there is one relevant period, the adjusted *base amount* will be calculated under section 76 after that period had ended.
 - If there are two or more relevant periods, the adjusted *base amount* if calculated after:
 - adjusting, using section 76 after the second relevant period, the amount that is adjusted after the first relevant period, and
 - adjusting under section 76, each later relevant period.
301. This clarifies that the adjustment to the *base amount* occurs in a compounding manner, after each *applicable adjustment period*.
302. A legislative note clarifies that there may or may not be an adjustment. Depending on the rate of interest that applies for a relevant period, the *base amount* could increase, decrease, or stay the same.
303. A second legislative note explains that the *trustee* of an *eligible superannuation plan* will make any adjustments necessary.

Section 74 – Applicable adjustment periods—whole of superannuation interest is an accumulation interest

304. Section 74 provides how to work out an *applicable adjustment period* for an *accumulation interest* in a *regulated superannuation fund* (except a *self managed superannuation fund*), an *approved deposit fund* or an *RSA*.
305. Where a *splittable payment* becomes payable, or a terminating action occurs before the end of the first allotment period (as defined under subsection 74(3)), the *superannuation interest* will only have one *applicable adjustment period*, which

under paragraph 74(1)(a), begins at the *operative time* of the superannuation agreement or *flag lifting agreement*, or *splitting order* and ends when the superannuation plan will provide *net earnings* to the member spouse if they ceased to be a member of the plan when they are paid the splittable amount or a terminating action occurs. Otherwise, the periods identified in paragraph 74(1)(b) will apply, which are identified in subsection 74(2).

306. A legislative note explains that if paragraph 72(1)(a) applies, the period is the first (and only) *applicable adjustment period* for the interest.

307. Subsection 74(2) provides for more than one adjustment periods as follows:

- the period beginning at the *operative time* and ending at the end of the first allotment period for the interest
- after the first allotment period, each whole allotment period (if any) for the interest ending before the *splittable payment* becomes payable or a terminating action occurs
- when a *splittable payment* becomes payable, or a terminating action occurs, the period that:
 - begins at the start of a payment becoming payable or the termination event, and
 - ending at the end of the period when the superannuation plan provides *net earnings* to the member spouse if they ceased to be a member of the plan when they are paid the splittable amount or a terminating action occurs.

308. Subsection 74(3) provides for defined terms that are used in section 74:

- ***allotment period*** means the period used by the plan to allot *net earnings* to the member for their interest in the plan.
- ***first allotment period*** means the allotment period when the *operative time* for the payment split occurs.
- ***terminating action*** means, for a *non-member spouse's* entitlement under a superannuation agreement, *flag lifting agreement* or *splitting order*, any of the following circumstances:
 - a new interest for the *non-member spouse* is created in the superannuation plan under the payment split provisions of the SIS Regulations
 - a new *RSA* is opened for the *non-member spouse* under the payment split provisions of the *RSA* Regulations
 - an amount to benefit the *non-member spouse* is transferred or rolled over under the payment split provisions of the SIS Regulations or the *RSA* Regulations to another *superannuation fund*, or
 - the *non-member spouse* meets a condition of release and receives a payment under the payment split provisions of the SIS Regulations or the *RSA* Regulations.

309. A legislative note under subsection 74(3) signposts to readers that *relevant condition of release* is defined in section 19 of the 2025 Regulations.

Section 75 – Applicable adjustment periods—other superannuation interests

310. Section 75 provides the *applicable adjustment period* for a *superannuation interest* that is not an interest for which section 74 applies. This applies to an interest that is not an *accumulation interest*, and includes a *defined benefit interest*.

311. If a *splittable payment* becomes payable, or a terminating action occurs before the end of the first year (year is defined under subsection 75(2) as the year of income within the meaning of the SIS Act, or a financial year), the *superannuation interest* will have one *applicable adjustment period*, which under paragraph 75(1)(a), begins at the *operative time* of the superannuation agreement or *flag lifting agreement*, or *splitting order* and ends the day before the payment becomes payable or a terminating action occurs. Otherwise, the periods identified in paragraph 75(1)(b) will apply. These are:

- the period beginning at the *operative time* and ending at the end of the first year
- after the first year, each whole year (if any) for the interest ending before a *splittable payment* becomes payable, or a terminating action occurs, and
- in the year the *splittable payment* becomes payable, or a terminating action occurs, for the interest, the period at the beginning of that year and ending on the day before the payment becomes payable or the terminating action occurs.

312. Subsection 75(2) provides the defined terms that are used in subsection 75(1):

- ***First year*** means the year in which the *operative time* in relation to the relevant payment split occurs.
- ***Terminating action*** means, for a *non-member spouse's* entitlement under a superannuation agreement, *flag lifting agreement* or *splitting order*, any of the following circumstances:
 - a new interest for the *non-member spouse* is created under the governing rules of the superannuation plan
 - an amount to benefit the *non-member spouse* is transferred or rolled over under the governing rules of the superannuation plan to another *superannuation fund* or an *RSA*, or
 - the *non-member spouse* meets a condition of release and receives a payment of an amount.

313. A legislative note under subsection 75(2) signposts to readers that *relevant condition of release* is defined in section 19 of the 2025 Regulations.

314. ***Year*** means a year of income (as defined in subsection 10(1) of the SIS Act) for a *regulated superannuation fund*, or for another *superannuation interest*, a financial year.

Section 76 – Interest rates for adjustment of base amount

315. Subsection 76(1) provides that adjusting a *superannuation interest* occurs by applying an interest rate to an amount after the *applicable adjustment period*. The interest rate depends on the *superannuation interest*.

Superannuation interest is wholly an accumulation interest (other than an interest in a self managed superannuation fund)

316. Subsection 76(2) provides what interest rate will be used to adjust an accumulation *superannuation interest* (other than a *self managed superannuation fund*). Paragraphs 76(2)(a) and (b) generally provide that the interest rate attaching to an allocation of *net earnings* to the member spouse, or the rate that will apply if the member spouse voluntarily ceases to be a member of the superannuation plan, is the interest rate used to adjust the *base amount* allocated to the *non-member spouse*.

Superannuation interest is wholly or partly a defined benefit interest, or is in a self managed superannuation fund

317. Subsection 76(3) provides a table of different *applicable adjustment periods* in column 1 and a relevant interest rate in column 2 for the adjustment period when the *superannuation interest* is a *defined benefit interest* or is in a *self managed superannuation fund*. If the *applicable adjustment period* is:

- a financial year - the interest rate will be determined under paragraph 76(4)(a)
- a period of less than 12 months in a single financial year - the rate will be determined under paragraph 76(4)(b)
- begins in a financial year and ends in the following financial year - the rate calculated using the method determined under paragraph 76(5)(c).

318. Subsection 76(4) provides that the Australian Government Actuary may, using a legislative instrument, determine the rates or methods that will be used by the table under subsection 76(3). A legislative note under the subsection explains how to calculate the interest rate when the *applicable adjustment period* straddles two financial years.

Division 2—Superannuation interest in growth phase at date of service of agreement or date of order

Subdivision A—Preliminary

Section 77 – Simplified outline of this Division

319. Section 77 provides a simplified outline of the Division. The Part will be used to calculate the amount that a *non-member spouse* is entitled to be paid when there is a payment split under a superannuation agreement or *flag lifting agreement*, or a *splitting order*, for a *superannuation interest* that was in the *growth phase* at the date the agreement was served on the *trustee* or at the date of the order.

Section 78 – Application of this Division

320. Subsection 78(1) provides that this Division applies to a *superannuation interest* for the purposes of subsection 38(2) or paragraph 46(a).

321. Subsection 38(2) signposts to this Division to calculate the amount a *non-member spouse* is entitled to be paid from a *splittable payment* subject to a superannuation agreement or a *flag lifting agreement*. It only relates to an interest that is not a *small superannuation accounts interest* and is either not in existence at the date of the agreement, or is in existence but in the *growth phase*.
322. Paragraph 46(a) signposts to this Division to calculate the amount a *non-member spouse* is entitled to be paid from a *splittable payment* subject to a *splitting order*. It only relates to an interest that is in the *growth phase* and that is not a *percentage-only interest*, or a *small superannuation accounts interest*.
323. A legislative note under subsection 78(1) clarifies that this Division does not apply to a payment split in respect of a *small superannuation accounts interest* and signposts readers to paragraph 38(1)(a) or section 46 of the 2025 Regulations.
324. Subsection 78(2) provides for this Division to apply for a second or later payment split as modified by Schedule 12 of the 2025 Regulations, which substitutes certain provisions in sections 80, 81 and 82. The general principle that is given effect by this subsection and Schedule 12 is that *payment splits* under an agreement or order with an earlier *operative time* are given priority over *payment splits* under an agreement or order with a later *operative time*. This contemplates that a member spouse may have multiple family law separations with different *non-member spouses* over time. It ensures that *non-member spouses* are paid in the order that their order or agreement was made in.

Section 79 – Approval of the transition factor, or a method for determining the transition factor, to be used for determining the amount the non-member spouse is entitled to be paid

325. Section 79 is supported by subsections 90XT(3) and 90YY(4) and subparagraphs 90XT(1)(a)(i) and 90YY(1)(a)(i) of the Family Law Act which provide the power for the Minister to approve a transition factor, or one or more methods to determine the transition factor, which is to be used to determine the amount a *non-member spouse* is entitled to be paid from a *splittable payment*.
326. Several provisions within this Division provide the process for calculating the entitlement of a *non-member spouse*, depending on the type of *splittable payment* the member is receiving.
327. Section 79 requires the Minister’s approval, by legislative instrument, of a specific ‘transition factor’, or a method for determining the transition factor, relevant for a particular *superannuation interest* to be applied when calculating a *non-member spouse’s* entitlement. This is particularly important when the calculation of the *non-member spouse’s* entitlement occurs using current methods or factors that do not align with the methods or factors used when the agreement or order was originally made, because they have since been updated.
328. A transition factor has been introduced by the 2025 Regulations to address circumstances where a *superannuation interest* might be valued twice at two different points in time and between these two points, there has been a change in valuation methods or factors (which may occur following an update to the underlying assumptions) that would result in a change in the value of the interest as determined under the 2025 Regulations.

329. In these circumstances, the first valuation will be calculated at the time the agreement or order is made, and the second valuation will be calculated when a *splittable payment* becomes payable. This second calculation could be many years later when the member spouse retires.
330. If there has been a change in valuation methods or factors between the first and second calculation events, the member spouse or the *non-member spouse* could be inadvertently disadvantaged as the second valuation would calculate a different entitlement, compared to the first valuation due to the change in valuation methods or factors.
331. To avoid this unintended consequence, transition factors will be applied in the formulae under Part 7 to reduce any impact on a *non-member spouse's* entitlement that would otherwise be caused by a change in methods or factors. It is expected that the value of a members' interest will change over time due to a number of reasons. However, the transition factors are not intended to address changes in value caused by any other reason other than the change in methods and factors.
332. The transition factors were developed by the Australian Government Actuary for circumstances where an interest was in *growth phase* when the superannuation agreement was served on the *trustee*, or at the date of the *splitting order*. Where the agreement was served when the interest was in the *payment phase*, or where the *splitting order* is dated when the interest was in the *payment phase*, the Australian Government Actuary has advised that transition factors are not appropriate, due to the wide variance across the factors that apply at each post-retirement age and the relatively unlikely event that the two calculation dates (both in the payment phase) straddle a change in valuation methods or factors. This includes a *payment phase superannuation interest*, the benefits in respect of which are payable as a *lifetime pension*, a fixed term *pension*, or a *pension* payable upon the member's invalidity.

Subdivision B—First splittable payment that the member spouse or other person is entitled to receive is a lump sum

Section 80 – Amount to be paid to non-member spouse—benefits payable only as lump sum that is greater than or equal to the adjusted base amount

333. Subsection 80(1) provides that the section applies to a *superannuation interest* if:
- the first payment the member spouse or other person would receive is a lump sum (paragraph 80(1)(a))
 - the lump sum is mandatory and is not the result of the member spouse or other person choosing to take (whether this be by commutation of a *pension* or otherwise) all or some of their benefits as a lump sum (paragraph 80(1)(b)), and
 - the lump sum is greater than or equal to the adjusted *base amount* the *non-member spouse* is entitled to when the *splittable payment* becomes payable (paragraph 80(1)(c)).
334. The reference to other person in paragraphs 80(1)(a) and (b) is supported by section 90XE of the Family Law Act which identifies that a *splittable payment* could include a payment to another person for the benefit of the spouse

(section 90XE(1)(b)) or a payment to a *reversionary beneficiary* after the death of a spouse (section 90XE(1)(d)).

335. Subsection 80(2) provides that for a *superannuation interest* with circumstances outlined in subsection 80(1), the amount the *non-member spouse* is entitled to be paid from the lump sum is equal to the adjusted *base amount* for the *non-member spouse*.
336. Subsection 80(3) provides that the *non-member spouse* is not entitled to any further amount from any other *splittable payment* in respect of the *superannuation interest* in the future. This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or *splitting order*, is no longer required to split any future *splittable payments* to the member spouse.

Section 81 – Amount to be paid to non-member spouse—benefits payable only as lump sum that is less than adjusted base amount

337. Subsection 81(1) provides that the section applies to a *superannuation interest* if:

- the first payment the member spouse or other person will receive is a lump sum (paragraph 81(1)(a))
- the lump sum is mandatory and is not the result of the member spouse or other person choosing to take (whether this be by commutation of a *pension* or otherwise) all or some of their benefits as a lump sum (paragraph 81(1)(b)), and
- the lump sum is less than the adjusted *base amount* for the *non-member spouse* when the *splittable payment* becomes payable (paragraph 81(1)(c)).

338. Subsection 81(2) provides that for a *superannuation interest* with circumstances outlined in subsection 81(1), the amount the *non-member spouse* is entitled to be paid from the *superannuation interest* is the lump sum amount and the amount calculated under subsection 81(3) from each *splittable payment*, unless section 82 applies.

339. Subsection 81(3) provides the formula for the amount the *non-member spouse* is entitled to be paid from each other *splittable payment* that becomes payable for the interest. The defined terms in the formula are:

- ***Adjusted base amount*** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
- ***Initial lump sum*** means the lump sum amount paid to the *non-member spouse* under paragraph 81(2)(a).
- ***Splittable payment amount*** means the amount of the relevant *splittable payment*. This is the amount being paid to the member, from which the *non-member spouse* will receive a portion of, as calculated under this subsection.
- ***Transition factor*** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved

under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.

- ***Deemed value of the interest were it in payment phase at adjusted date*** means the amount that will be calculated under section 64 of the 2025 Regulations for the *superannuation interest* if references in Division 2 of Part 6 to the *relevant date* were references to the date the first *splittable payment* became payable in respect of the *superannuation interest*.

Section 82 – Amount to be paid to non-member spouse—optional lump sum from remaining benefits

340. Subsection 82(1) provides that the section applies to a *superannuation interest* if:

- the *non-member spouse* is entitled to be paid the amount of the lump sum under paragraph 81(2)(a) (this is an initial lump sum the member spouse does not have a choice in taking) (paragraph 82(1)(a))
- the member spouse or other person may choose to take all or some of the remaining benefits as a lump sum, whether that be by way of commutation of a *pension* or otherwise (this is a further optional lump sum the member spouse may choose to take) (paragraph 82(1)(b))
- the *non-member spouse* has served a request on the *trustee* using Form 2 in Schedule 1 of the 2025 Regulations, to be paid as a lump sum, a portion or all of the remaining adjusted *base amount* for the interest when the *splittable payment* becomes payable (paragraph 82(1)(c)), and
- by making the choice to be paid the amount requested by the *non-member spouse*, the member spouse or other person will not lose their right to take the remaining part of their benefit as a *pension* (paragraph 82(1)(d)).

341. Subsections 82(2) and (3) provide for the calculation of the lump sum if the *non-member spouse* has requested the whole of their remaining adjusted *base amount* be paid as a lump sum.

342. Subsections 82(4), (5), (6) and (7) provide for the calculation of the second lump sum, and the entitlement to each other future *splittable payment*, if the *non-member spouse* has requested a portion of their remaining adjusted *base amount* to be paid as a lump sum.

Non-member spouse requests whole of remaining adjusted base amount to be paid as a lump sum

343. Subsection 82(2) provides that if the *non-member spouse* requests to be paid the whole of the remaining adjusted *base amount* as a lump sum, they must choose to be paid an amount that is calculated under subsection 82(3). A *non-member spouse* will not be entitled to be paid any amount from another *splittable payment* for the *superannuation interest*. This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or

splitting order, is no longer required to split any future *splittable payments* to the member spouse.

344. Subsection 82(3) provides the formula to calculate the *non-member spouse's* entitlement when they have requested to be paid the whole of the remaining adjusted *base amount*. The *non-member spouse* does not automatically receive the whole adjusted *base amount* less any initial lump sum. The formula applies a commutation factor and *pension* valuation factor to calculate a final amount. The defined terms in the formula are:
- ***Adjusted base amount*** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
 - ***Initial lump sum*** means the lump sum amount paid to the *non-member spouse* under paragraph 81(2)(a).
 - ***Transition factor*** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under explanatory notes for section 79.
345. A legislative note under subsection 82(3) will signpost to readers that the terms ***commutation factor*** and ***pension valuation factor*** are defined in section 72 of the 2025 Regulations. The commutation factor is information that is specific to each scheme and is provided under Part 9 of the 2025 Regulations. The *pension* valuation factor is approved by the Minister under section 70 or alternatively found in Schedules 5 to 7, which may in some circumstances include the factors set out in Schedule 3.

Non-member spouse requests proportion of remaining adjusted base amount to be paid as a lump sum

346. Subsection 82(4) provides that if the *non-member spouse* requests to be paid part of the remaining adjusted *base amount* as a lump sum, the member spouse or other person must choose to be paid an amount by the *trustee* that is at least the amount calculated under subsection 82(5). The *non-member spouse* is then entitled to be paid that minimum amount.
347. The *non-member spouse* is also entitled to be paid part of the excess amount if the member's lump sum is higher than the adjusted *base amount* and an amount from each other *splittable payment* for the *superannuation interest*. These amounts are calculated under subsection 82(6).
348. Subsection 82(5) provides the formula to calculate the minimum amount the member spouse must request to be paid, and the amount the *non-member spouse* will be entitled to as a lump sum when they have requested to be paid part of the remaining

adjusted *base amount* under paragraph 82(4)(a). The defined terms in the formula are:

- **Adjusted base amount** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
- **Initial lump sum** means the mandatory initial lump sum amount paid to the *non-member spouse* under paragraph 81(2)(a).
- **Proportion** means the proportion of the adjusted *base amount* requested by the *non-member spouse*, under paragraph 82(1)(c), to be paid to them as a lump sum.
- **Transition factor** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.

349. A legislative note under subsection 82(5) signposts to readers that the terms **commutation factor** and **pension value factor** are defined in section 72 of the 2025 Regulations.

350. Subsection 82(6) provides the formula to calculate the other amounts a *non-member spouse* is also entitled to under paragraph 82(4)(c). For example, this formula calculates the proportion of ongoing *pension* payments to a member spouse that a *non-member spouse* may be entitled to after receiving part of their entitlement as lump sums. The defined terms in the formula are:

- **Adjusted base amount** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
- **Initial lump sum** means the mandatory initial lump sum amount paid to the *non-member spouse* under paragraph 81(2)(a).
- **Proportion** means the proportion of the adjusted *base amount* requested by the *non-member spouse*, under paragraph 82(1)(c), to be paid to them as a lump sum.
- **Splittable payment amount** means either the excess amount under subparagraph 82(4)(c)(i) or the amount of any other *splittable payment* under subparagraph 82(4)(c)(ii).
- **Transition factor** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under

section 79, or the factor determined in accordance with the method approved under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.

- ***Remaining value of the superannuation interest*** means the value of the *superannuation interest* after any lump sum is paid to the *non-member spouse* as calculated under subsection 82(7).

351. Subsection 82(7) provides the formula to calculate the remaining value of the superannuation interest that is used in the formula at subsection 82(6). The defined terms in the formula are:

- ***Deemed value of the interest were it in payment phase at adjusted date*** means the amount that is calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable for the interest.
- ***Initial lump sum*** means the mandatory initial lump sum amount paid to the *non-member spouse* under paragraph 81(2)(a).
- ***Other lump sum*** means the optional lump sum amount paid to the *non-member spouse* under paragraph 82(4)(b).
- ***Transition factor*** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.

352. A legislative note under subsection 82(7) signposts to readers that the terms ***commutation factor*** and ***pension value factor*** are defined in section 72 of the 2025 Regulations.

Subdivision C—Optional lump sum relating to the whole or part of the adjusted base amount

Section 83 – Amount to be paid to non-member spouse—optional lump sum relating to the whole of the adjusted base amount

353. Section 83 applies to circumstances where the member spouse can choose to be paid an optional lump sum that would cover the entirety of the *adjusted base amount applicable to the non-member spouse*.

354. Subsection 83(1) provides that the section applies to a *superannuation interest* if:

- benefits for the interest are not payable as an *allocated pension* or a *market linked pension* (paragraph 83(1)(a))

- the member spouse or other person may choose to take an amount that is at least the *adjusted base amount applicable to the non-member spouse*, without losing their right to take the rest of their remaining benefit as a *pension* (paragraph 83(1)(b)), and
 - the *non-member spouse* has served a request on the *trustee* using Form 3 in Schedule 1 of the 2025 Regulations, requesting they be paid as a lump sum all of the *adjusted base amount* (paragraph 83(1)(c)).
355. Subsection 83(2) provides that the member spouse must choose to be paid an amount that is calculated using the formula in the subsection. This is the amount that the *non-member spouse* will receive (see subsection 83(3)). The defined terms in the formula are:
- ***Adjusted base amount*** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
 - ***Transition factor*** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.
356. A legislative note under subsection 83(2) signposts to readers that the terms ***commutation factor*** and ***pension value factor*** are defined in section 72 of the 2025 Regulations.
357. Subsection 83(4) provides that the *non-member spouse* is not entitled to any further amount from any other *splittable payment* in respect of the *superannuation interest* in the future. This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or *splitting order*, is no longer required to split any future *splittable payments* to the member spouse.

Section 84 – Amount to paid to non-member spouse—optional lump sum relating to part of the adjusted base amount

358. Section 84 applies to circumstances where the member spouse can choose to be paid an optional lump sum that would cover the entirety of the *adjusted base amount applicable to the non-member spouse* but where the *non-member spouse* has only requested to be paid a proportion of their applicable *adjusted base amount*.
359. Subsection 84(1) provides that the section applies to a *superannuation interest* if:
- the benefits for the interest are not payable as an *allocated pension* or a *market linked pension* (paragraph 84(1)(a))
 - the member spouse or other person may choose to take an amount that is at least the *adjusted base amount* for the *non-member spouse*, without losing

their right to take the rest of their remaining benefit as a *pension* (paragraph 84(1)(b)), and

- the *non-member spouse* has served a request on the *trustee* using Form 3 in Schedule 1 of the 2025 Regulations, for them to be paid as a lump sum, a proportion of their adjusted *base amount* (paragraph 84(1)(c)).

360. Subsection 84(2) provides that the member spouse must choose to be paid an amount that is at least the amount calculated using the formula in the subsection, which will be called the *minimum lump sum*. The defined terms in the formula are:

- ***Adjusted base amount*** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
- ***Proportion*** means the proportion of the adjusted *base amount* requested by the *non-member spouse*, under paragraph 84(1)(c), to be paid to them as a lump sum.
- ***Transition factor*** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.

361. A legislative note under subsection 84(2) signposts to readers that the terms ***commutation factor*** and ***pension value factor*** are defined in section 72 of the 2025 Regulations.

362. Subsection 84(3) provides that the *non-member spouse* is entitled to:

- the minimum lump sum amount
- a proportion of any excess amount if the member's lump sum is higher than the adjusted *base amount* as calculated under subsection 84(4), and
- an amount from each other *splittable payment* for the *superannuation interest* as calculated under subsection 84(4).

363. Subsection 84(4) provides the formula to calculate the other amounts a *non-member spouse* is also entitled to under paragraph 84(3). The defined terms in the formula are:

- ***Adjusted base amount*** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.

- **Proportion** means the proportion of the adjusted *base amount* requested by the *non-member spouse*, under paragraph 84(1)(c), to be paid to them as a lump sum.
- **Splittable payment amount** means either the excess amount under subparagraph 84(3)(b)(i) or the amount of any other *splittable payment* under subparagraph 84(3)(b)(ii).
- **Transition factor** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved under section 79. Where one or more benefits in respect of the interest are payable as a *lifetime pension* for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.
- **Deemed value of the interest were it in payment phase at adjusted date** means the amount that is calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable for the interest.
- **Initial lump sum** means the lump sum amount paid to the *non-member spouse* under paragraph 84(3)(a).

364. A legislative note under subsection 84(4) signposts to readers that the terms *commutation factor* and *pension value factor* are defined in section 72 of the 2025 Regulations.

Subdivision D—No benefit payable only as a lump sum, or first splittable payment is not a lump sum

Section 85 – Amount to be paid to non-member spouse—no benefit payable only as a lump sum, or first splittable payment is not a lump sum

365. Section 85 applies in two circumstances:

- where benefits are not payable as an *allocated pension* or *market linked pension*, and where there is no lump sum available (either one that the member spouse chooses to receive, or has no choice receiving) to the member spouse or other person, or
- where the first *splittable payment* is not a lump sum, but a lump sum may be payable at a later time.

366. Subsection 85(1) provides that the section applies to a *superannuation interest* if:

- benefits for the interest are not payable as an *allocated pension* or a *market linked pension* and no benefit is payable to the member spouse or other person as a lump sum (paragraph 85(1)(a)), or
- the first *splittable payment* the member spouse or other person may receive is not a lump sum but a later lump sum is payable at a later time (paragraph 85(1)(b)).

367. Subsection 85(2) provides the formula to calculate the amount a *non-member spouse* is entitled to be paid for each *splittable payment* that becomes payable for the interest. This formula will be applied to each *splittable payment* payable to a member spouse in respect of the interest, with the effect that the *non-member spouse* would be entitled to an amount from each *splittable payment*, where the payment is not a lump sum. The defined terms in the formula are:

- ***Adjusted base amount*** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
- ***Splittable payment amount*** means the amount of the *splittable payment*.
- ***Transition factor*** will be defined contingent on certain circumstances. Where a method or factors have been approved to determine the gross value of the interest, the transition factor will be either the factor approved under section 79, or the factor determined in accordance with the method approved under section 79. Where the interest is a *lifetime pension* payable for reason other than due to the *member spouse's* invalidity, the transition factor will be determined in accordance with Schedule 11. In all other cases, the transition factor will be 1. See further explanation of transition factors under the explanatory notes for section 79.
- ***Deemed value of the interest were it in payment phase at adjusted date*** means the amount that will be calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable for the interest.

Section 86 – Amount to be paid to non-member spouse—benefits payable as allocated pension or market linked pension

368. Subsection 86(1) provides that the section applies to a *superannuation interest* if all or some of the benefits are an allocated or *market linked pension* and section 80 of the 2025 Regulations does not apply to the interest. Section 80 will apply where the first *splittable payment* that a member spouse receives is mandatory and is equal to, or more than, the *adjusted base amount applicable to the non-member spouse*.

Benefits for the interest are payable as an allocated pension and not as a market linked pension

369. Subsection 86(2) identifies that when a *splittable payment* becomes payable at a particular date and there is an *allocated pension* being paid to the member spouse, the *non-member spouse* is entitled to be paid an amount equal to the *adjusted base amount* applicable to them. The *adjusted base amount* is calculated under Division 1 of Part 7 of the 2025 Regulations.

Benefits for the interest are payable as a market linked pension and not as an allocated pension

370. Subsection 86(3) identifies that when a *splittable payment* becomes payable at a particular date and there is a *market linked pension* being paid to the member spouse, the *non-member spouse* is entitled to be paid from the lump sum that the *market*

linked pension is being paid from, an amount equal to the adjusted *base amount* applicable to them. The adjusted *base amount* is calculated under Division 1 of Part 7 of the 2025 Regulations.

Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is greater than or equal to the adjusted base amount

371. Subsection 86(4) identifies that when a *splittable payment* becomes payable at a particular date with the member spouse receiving payments both as an *allocated pension* and a *market linked pension*, the member spouse is entitled to receive an amount equal to the adjusted *base amount* when the lump sum from which the *allocated pension* is being paid is equal or more than the adjusted *base amount*. The adjusted *base amount* is calculated under Division 1 of Part 7 of the 2025 Regulations.

Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is less than the adjusted base amount

372. Subsection 86(5) identifies that when a *splittable payment* becomes payable at a particular date with the member spouse receiving payments both as an *allocated pension* and a *market linked pension* and the *allocated pension* being paid is less than the adjusted *base amount*, the *non-member spouse* is entitled to receive the lump sum amount from which the *allocated pension* is payable plus an amount from the lump sum from which the *market linked pension* is payable, to make up the difference. The adjusted *base amount* is calculated under Division 1 of Part 7 of the 2025 Regulations.

Entitlement of non-member spouse for any other splittable payments

373. Subsection 86(6) provides that the *non-member spouse* is not entitled to any further amount from any other *splittable payment* in respect of the *superannuation interest* in the future. This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or *splitting order*, is no longer required to split any future *splittable payments* to the member spouse.
374. However, subsection 86(7) provides an exception if the lump sum mentioned in subsection 86(2) or (3), or the total of the lump sums at paragraphs 86(5)(d) and (e), is less than the *adjusted base amount applicable to the non-member spouse*. In this circumstance, the *non-member spouse* is entitled to be paid the amount of the lump sum and an amount from each other *splittable interest* that is calculated under subsection 86(8).
375. Subsection 86(8) provides the formula used when the circumstances under subsection 86(7) apply. The defined terms in the formula are:
- ***Adjusted base amount*** means the *adjusted base amount applicable to the non-member spouse* for the interest at the date the first *splittable payment* became payable in respect of the *superannuation interest*. This amount is calculated under Division 1 of Part 7 of the 2025 Regulations.
 - ***Initial lump sum(s)*** means the amount of any lump sum paid to the *non-member spouse* under paragraph 86(7)(a).
 - ***Splittable payment amount*** means the amount of the *splittable payment*.

- ***Deemed value of the interest were it in payment phase at adjusted date*** means the amount that is calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable for the interest.

376. A transition factor will not be relevant to this formula as the ‘deemed value of the interest were it in *payment phase* at adjusted date’ of a *superannuation interest*, the benefits in respect of which are payable as an *allocated pension* or a *market linked pension*, does not utilise a valuation method or factors. The prescribed approaches for determining the gross value of these interests are set out under subsections 66(4) and (5) which deem the value to be the *withdrawal benefit* or account balance of the interest, respectively.

Division 3—Superannuation interest in payment phase at date of service of agreement or date of order

Subdivision A—Preliminary

Section 87 – Simplified outline of this Division

377. Section 87 provides the simplified outline for the Division. Division 3 is used to calculate the amount the *non-member spouse* is entitled to be paid when a *superannuation interest*, that is not a *percentage-only interest*, was in the *payment phase* at the date when a superannuation agreement, *flag lifting agreement* was served, or *splitting order* was made.

Section 88 – Application of this Division

378. Section 88 provides that this Division applies where a superannuation agreement or *flag lifting agreement* specifies a total *base amount* that relates to the whole of a *superannuation interest* or where a *splitting order* applies to an interest and was served on the *trustee* when the interest was in the *payment phase*.

379. A legislative note under section 88 clarifies that this Division does not apply to *percentage-only interests* or a *small superannuation accounts interest*. The note directs readers to subsections 37(1), paragraph 39(1)(a) or section 46 which give effect to this.

Subdivision B—First or only payment split

Section 89 – Application of this Subdivision

380. Section 89 provides that this Subdivision identifies how to calculate the *non-member spouse’s* entitlement when the payment split is the first, or only, payment split for the *superannuation interest*.

Section 90 – Amount to be paid to non-member spouse—first splittable payment after operative time greater than or equal to the base amount

381. Subsection 90(1) provides that the section applies to a *superannuation interest* when the first payment is not in relation to an allocated or *market linked pension* and the amount of that payment is equal to or more than the *base amount* allocated to the *non-member spouse*.

382. When a superannuation agreement or *flag lifting agreement* is served, or an order is made, when the interest is in the *payment phase*, the 2025 Regulations do not require a further adjustment of the *base amount*. This contrasts with agreements served or orders made when the interest is in the *growth phase*, where Division 1 of Part 7 sets out a process for adjusting the *base amount*.
383. Subsection 90(2) provides that the *non-member spouse* is entitled to be paid, from the first *splittable payment*, an amount equal to the *base amount* that is allocated to them.
384. Subsection 90(3) provides that the *non-member spouse* is not entitled to be paid any amount from any other *splittable payment* from the *superannuation interest*. This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or *splitting order*, is no longer required to split any future *splittable payments* to the member spouse.

Section 91 – Amount to be paid to non-member spouse—first splittable payment after operative time is less than the base amount

385. Subsection 91(1) provides that the section applies to a *superannuation interest* when the first payment after the *operative time* is not in relation to an allocated or *market linked pension* and the amount of that payment is less than the *base amount* allocated to the *non-member spouse*.
386. Subsection 91(2) provides that the *non-member spouse* is entitled to be paid the amount of the first *splittable payment* and the amount calculated under subsection 91(3) for each other *splittable payment* that becomes payable for the *superannuation interest*, unless section 92 applies.
387. Subsection 91(3) provides the formula for calculating the amount payable to the *non-member spouse* from any other *splittable payment*. The defined terms in the formula are:
- **Base amount** means the *base amount* allocated to the *non-member spouse* for the *superannuation interest*. This amount is identified in the agreement or order.
 - **First splittable payment amount** means the amount of the first *splittable payment* that is paid to the *non-member spouse* under paragraph 91(2)(a).
 - **Splittable payment amount** means the amount of the relevant *splittable payment*.
 - **Deemed value of the interest** means the amount that will be calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to the *relevant date* were references to the date the first *splittable payment* became payable for the interest.

Section 92 – Amount to be paid to non-member spouse—optional lump sum from remaining benefits

388. Subsection 92(1) provides that the section applies to a *superannuation interest* if:
- the *non-member spouse* is entitled to be paid the amount of the first *splittable payment* under paragraph 91(2)(a), but that amount does not cover the *base amount* applicable to them (paragraph 92(1)(a))

- the member spouse may, under the governing rules of the superannuation plan, choose to take all or some of their remaining benefits as a further lump sum, either by commuting their *pension* or otherwise (paragraph 92(1)(b))
- the *non-member spouse* has served a request on the *trustee* requesting that they be paid, as a lump sum, some or all of the remaining *base amount* allocated to them, using Form 4 in Schedule 1 of the 2025 Regulations (paragraph 92(1)(c)), and
- the member spouse will not lose their right to take the remainder of their benefits as a *pension* by making a choice to be paid the amount requested by the *non-member spouse* (paragraph 92(1)(d)).

Request for whole of remaining base amount to be paid as a lump sum

389. Subsection 92(2) provides that if the *non-member spouse* requests under paragraph 92(1)(c) to be paid all of the remaining *base amount* allocated to them as a lump sum, the member spouse must choose to be paid an amount calculated under subsection 92(3) and they are not entitled to be paid any amount from any other *splittable payment*. This is the amount that the *non-member spouse* will receive (see paragraph 92(2)(b)).

390. The *non-member spouse* is then not entitled to be paid anything from future *splittable payments* (see paragraph 92(2)(c)). This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or *splitting order*, is no longer required to split any future *splittable payments* to the member spouse.

391. Subsection 92(3) provides the formula to calculate the amount under subsection 92(2). The defined terms in the formula are:

- ***Base amount*** means the *base amount* allocated to the *non-member spouse* for the *superannuation interest*. This amount is identified in the agreement or order.
- ***First splittable payment amount*** means the amount of the first *splittable payment* that is paid to the *non-member spouse* under paragraph 91(2)(a).

392. A legislative note under subsection 92(3) signposts to readers that the terms ***commutation factor*** and ***pension value factor*** are defined in section 72 of the 2025 Regulations.

Request for proportion of remaining base amount to be paid as a lump sum

393. Subsection 92(4) provides that if the *non-member spouse* requests to be paid under paragraph 92(1)(c) only part of the remaining *base amount* allocated to them, then the member spouse must choose to be paid a lump sum amount that is at least the amount calculated under subsection 92(5). This is the amount the *non-member spouse* will be entitled to. The *non-member spouse* will also be entitled to be paid a further amount that is calculated under subsection 92(6), from any excess to the minimum lump sum as well as from each other *splittable payment* for the *superannuation interest*.

394. Subsection 92(5) provides the formula for calculating the minimum lump sum the member must request to be paid and that the *non-member spouse* is entitled to. The defined terms in the formula are:
- **Base amount** means the *base amount* allocated to the *non-member spouse* for the *superannuation interest*. This amount is identified in the agreement or order.
 - **First splittable payment amount** means the amount of the first *splittable payment* that is paid to the *non-member spouse* under paragraph 91(2)(a).
 - **Proportion** means the proportion of the remaining *base amount* requested by the *non-member spouse* under paragraph 92(1)(c), to be paid to them as a lump sum.
395. A legislative note under subsection 92(5) signposts to readers that the terms **commutation factor** and **pension value factor** are defined in section 72 of the 2025 Regulations.
396. Subsection 92(6) provides the formula to calculate the amount a *non-member spouse* is also entitled to receive, from any other *splittable payment* and any amount in excess of the minimum lump sum, under paragraph 92(4)(c). The defined terms in the formula are:
- **Base amount** means the *base amount* allocated to the *non-member spouse* for the *superannuation interest*. This amount is identified in the agreement or order.
 - **First splittable payment amount** means the amount of the first *splittable payment* that is paid to the *non-member spouse* under paragraph 91(2)(a).
 - **Proportion** means the proportion of the remaining *base amount* requested by the *non-member spouse* under paragraph 92(1)(c), to be paid to them as a lump sum.
 - **Splittable payment amount** means either the excess amount under subparagraph 92(4)(c)(i) or the amount of any other *splittable payment* under subparagraph 92(4)(c)(ii).
 - **Remaining value of the superannuation interest** means the remaining value of the *superannuation interest* after the lump sums are paid to the *non-member spouse* as calculated under subsection 92(7).
397. Subsection 92(7) provides the formula to calculate the remaining value of the *superannuation interest*, which is an element of the formula under subsection 92(6). The defined terms in the formula are:
- **Deemed value of the interest** means the amount that will be calculated under section 64 of the 2025 Regulations for the *superannuation interest* if references in Division 2 of Part 6 to the *relevant date* were references to the date the first *splittable payment* became payable in respect of the *superannuation interest*.
 - **First splittable payment amount** means the amount of the lump sum paid to the *non-member spouse* under paragraph 91(2)(a).

- **Initial lump sum** means the amount of the lump sum paid to the *non-member spouse* under paragraph 92(4)(b).

398. A legislative note under subsection 92(7) signposts to readers that the terms **commutation factor** and **pension value factor** are defined in section 72 of the 2025 Regulations.

Section 93 – Amount to be paid to non-member spouse—benefits payable as allocated pension or market linked pension

399. Subsection 93(1) provides that the section applies to a *superannuation interest* when the first *splittable payment* after the *operative time* relates to an *allocated pension* or a *market linked pension*.

Benefits for the interest are payable as an allocated pension and not as a market linked pension

400. Subsection 93(2) provides that when some or all of the benefits for the interest are payable as an *allocated pension* (rather than a *market linked pension*), the *non-member spouse* is entitled to be paid from the lump sum that the *allocated pension* becomes payable, an amount that is equal to the *base amount* allocated to them.

Benefits for the interest are payable as a market linked pension and not as an allocated pension

401. Subsection 93(3) provides that when all or some of the benefits for the interest are payable as a *market linked pension* (rather than an *allocated pension*), the *non-member spouse* is entitled to be paid from the lump sum that the *market linked pension* becomes payable, an amount equal to the *base amount* allocated to them.

Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is greater than or equal to the base amount

402. Subsection 93(4) provides that when one part of the benefits for the interest is payable as an *allocated pension* and another part is payable as a *market linked pension*, and the amount of the lump sum from which the *allocated pension* is being paid from is the same or more than the *base amount* allocated to the *non-member spouse*, then the *non-member spouse* is entitled to be paid the *base amount* from that lump sum.

Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is less than the base amount

403. Subsection 93(5) provides that when one part of the benefits for the interest is payable as an *allocated pension* and another part is payable as a *market linked pension*, and the amount of the lump sum from which the *allocated pension* is being paid from is less than the *base amount* allocated to the *non-member spouse*, then the *non-member spouse* is entitled to be paid the *allocated pension* lump sum amount plus an amount from the lump sum from which the market-linked *pension* is payable, to make up the difference.

Other splittable payments in respect of the superannuation interest

404. Subsection 93(6) provides that the *non-member spouse* is not entitled to be paid any amount from any other payment split for the *superannuation interest*. This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or *splitting order*, is no longer required to split any future *splittable payments* to the member spouse.
405. However, if the lump sum mentioned in subsections 93(2) or (3), or the total of the lump sums at paragraphs 93(5)(d) and (e) is less than the *base amount applicable to the non-member spouse*, subsection 93(7) provides that the *non-member spouse* is entitled to be paid further amounts from each other splittable interest that is calculated under subsection 93(8).
406. Subsection 93(8) provides the formula used when the circumstances under subsection 93(7) apply. The defined terms in the formula are:
- **Base amount** means the *base amount* allocated to the *non-member spouse* for the *superannuation interest*. This amount is identified in the agreement or order.
 - **Initial lump sum(s)** means the amount of the lump sum, or lump sums, paid to the *non-member spouse* under paragraph 93(7)(a).
 - **Splittable payment amount** means the amount of the relevant *splittable payment*.
 - **Deemed value of the interest at date first splittable payment becomes payable** means the amount that will be calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable for the interest.

Subdivision C—Second or later payment split

Section 94 – Application of this Subdivision

407. Section 94 provides that this Subdivision identifies how to calculate the *non-member spouse's* entitlement when the payment split is the second, or later, payment split of the same *splittable payment*.
408. This Subdivision provides for circumstances where there is more than one agreement or order that applies to a member's *superannuation interest*. This could occur where a member spouse has re-partnered and subsequently separated with superannuation splitting arrangements, resulting in a second *non-member spouse*.
409. The Subdivision gives effect to the policy that priority is given to *payment splits* under an agreement or order with an earlier *operative time*, and earlier *non-member spouses* will receive their entitlement before subsequent *non-member spouses*. This contemplates that a member spouse may have multiple family law separations with different *non-member spouses* over time. This will ensure that *non-member spouses* are paid in the order that their order or agreement was made in.

Section 95 – Amount to be paid to non-member spouse—first splittable payment after operative time greater than or equal to the amount of earlier payments plus base amount

410. Subsection 95(1) provides that this section applies to a *superannuation interest* when the first *splittable payment* payable after the *operative time* is not in relation to a market linked or *allocated pension*, and the amount of the payment is equal or more than the sum of:
- the amount payable under subsections 81(3), 82(6), 84(4), 85(2), 91(3) or 92(6) of the 2025 Regulations or this section to each other person under a payment split with an earlier *operative time* for the interest, and
 - the *base amount* allocated to the *non-member spouse*.
411. Subsection 95(2) provides that the *non-member spouse* is entitled to be paid the *base amount* for the first *splittable payment*.
412. Subsection 95(3) provides that the *non-member spouse* is not entitled to any further amount from any other *splittable payment* in respect of the *superannuation interest* in the future. This is because the *non-member spouse* has received their full entitlement and the superannuation agreement or *flag lifting agreement*, or *splitting order*, is no longer required to split any future *splittable payments* to the member spouse.
413. If a *member spouse's splittable payment* can cover the entirety of the entitlement of a *non-member spouse* in addition to the entirety of the entitlements of all other *non-member spouses* with earlier splitting arrangements, then the *non-member spouse* will receive an amount equal to their *base amount*.

Section 96 – Amount to be paid to the non-member spouse—first splittable payment after operative time is less than the amount of earlier payments plus base amount

414. Subsection 96(1) provides that this section applies to a *superannuation interest* when the first *splittable payment* payable after the *operative time* is not for a market linked or *allocated pension* and the amount of the payment is less than the sum of:
- the amount payable under subsections 81(3), 82(6), 84(4), 85(2), 91(3) or 92(6) of the 2025 Regulations or this section, to each other person under a payment split with an earlier *operative time* for the interest, and
 - the *base amount* allocated to the *non-member spouse*.
415. Subsection 96(2) provides that the *non-member spouse* is entitled to be paid the amount of the first *splittable payment* and an amount calculated under subsection 96(3) from each other *splittable payment* that becomes payable.
416. A legislative note under subsection 96(2) explains that the amount the *non-member spouse* receives under subsection 96(2) is reduced by the entitlements of other *non-member spouses* under paragraph 96(1)(b). This occurs by operation of subsections 90XX(3) and 90YZN(3) of the Family Law Act that state that the amount of a *splittable payment* is taken to be reduced by the amount to which other persons are entitled to under earlier *payment splits*.
417. Subsection 96(3) provides the formula that applies to paragraph 96(2)(b). The defined terms in the formula are:

- **Base amount** means the *base amount* allocated to the *non-member spouse* for the *superannuation interest*. This amount is identified in the agreement or order.
- **First splittable payment amount** means the amount of the first *splittable payment* under paragraph 96(2)(a).
- **Splittable payment amount** means the amount of the relevant *splittable payment*.
- **Deemed value of the interest** means the amount that will be calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable for the interest.

Section 97 – Amount to be paid to non-member spouse—benefits payable as allocated pension or market linked pension

418. Subsection 97(1) provides that this section applies if the first *splittable payment* for a *superannuation interest* that becomes payable after the *operative time*, is a payment relating to an *allocated pension* or *market linked pension*.
419. Subsection 97(2) provides that the *non-member spouse* is entitled to be paid the amounts calculated under section 93 of the 2025 Regulations, as if the payment split was the first payment split for the interest.

Part 8—Fees payable to trustee and waiver of rights

Section 98 – Reasonable fees payable to trustee

420. Subsections 90XY(1) and 90YZO(1) of the Family Law Act provide that regulations may allow for *trustees* to charge reasonable fees in respect of family law superannuation splitting. These provisions of the Family Law Act also permit the regulations to prescribe the person or persons liable to pay those fees.
421. Section 98 provides for superannuation *trustees* to charge reasonable fees for providing services required to carry out their obligations under a superannuation agreement or a splitting or *flagging order*. Specifically, subsection 98(1) provides that a *trustee* of an *eligible superannuation plan* may charge reasonable fees in relation to:
- a payment split
 - a *payment flag*
 - flag lifting under a *flag lifting agreement* that does not provide for a payment split
 - an order terminating the operation of a *payment flag* under section 90XM or 90UR of the Family Law Act
 - an application for information about a *superannuation interest* made under section 90XZB or 90YZR of the Family Law Act, and

- any other thing the *trustee* does in relation to a *superannuation interest* that is dealt with under a superannuation agreement, *flag lifting agreement* or *splitting order*.
422. Subsections 98(2) and (3) set out who is liable for these fees. A fee charged by a *trustee* in relation to a *payment split*, a *payment flag* or anything the *trustee* does for a *superannuation interest* under a superannuation agreement, *flag lifting agreement*, or *splitting order*, must be shared equally between the member and *non-member spouse*, subject to two exceptions:
- When the fee is for a *payment split* where the *non-member spouse* is entitled to the whole amount of every *splittable payment* that becomes payable, the *non-member spouse* must pay these fees (paragraph 98(2)(b)).
 - When the fee is in relation to an application for information about a *superannuation interest* under section 90XZB or 90YZR of the Family Law Act, as mentioned in paragraph 98(1)(e), the fee is payable by the applicant (subsection 98(3)).

Section 99 – Waiver of rights under payment split

423. Subsections 90XZA(2) and 90YZQ(2) of the Family Law Act provide that a *non-member spouse* may waive their entitlement under a *payment split* if they serve a waiver notice using a form prescribed in the 2025 Regulations on the *trustee*. The effect of such a waiver is that a *non-member spouse* is no longer entitled to be paid any amount under the *payment split* and the entitlement of the member spouse is reduced in the same way as it would have been reduced if the entitlement of the *non-member spouse* had not been waived.
424. These provisions in the Family Law Act allow the *trustee* to take action outside the superannuation splitting laws in return for the *non-member spouse* issuing a waiver to their entitlements. Examples of where this may occur are provided in the Family Law Act.
425. Section 99 provides the circumstances that must be met for an effective waiver notice.
426. Subsection 99(1) provides that a waiver notice must be in accordance with Form 5 in Schedule 1 of the 2025 Regulations.
427. Under sections 90XZA and 90YZQ of the Family Law Act, a waiver notice must have a statement that the *non-member spouse* has received independent financial advice about the financial effect of the notice. Subsection 99(2) prescribes each of the following people as a financial adviser capable of providing the independent financial advice:
- a person that holds an Australian financial services licence as defined in the Corporations Act that allows them to provide advice of the kind listed under paragraph 90XZA(2)(a) or 90YZQ(2)(a) of the Family Law Act, and
 - a person who complies with section 911B of the Corporations Act when providing a financial service, that includes providing the kind of advice required under paragraph 90XZA(2)(a) or 90YZQ(2)(a) of the Family Law Act on behalf of a person who holds an Australian financial services licence.

Part 9—Provision of information to and by trustee

Division 1—Preliminary

Section 100 – Simplified outline of this Part

428. Section 100 provides the simplified outline for this Part. Part 9 contains provisions about how to apply for information from a *trustee* about a *superannuation interest* under section 90XZB or 90YZR of the Family Law Act, and the kind of information the *trustee* must provide in response to such an application. It also sets out the obligations of *trustees* to provide ongoing information to the *non-member spouse* after the service of a superannuation agreement or making of a *splitting order*. Finally, it outlines the information a *non-member spouse* is required to give to a *trustee* following the service of a superannuation agreement or making of a *splitting order*.
429. This Part supports parties to understand the nature of *superannuation interests* held by each of them, in order to negotiate a superannuation agreement, *flag lifting agreement* or *splitting order*. This Part also supports the court to understand the nature of superannuation interests held by each party, in contemplation of a splitting order. Some of the information provided under this Part is crucial to ascertaining or calculating the value of the interest.
430. Division 2 of Part 9 prescribes the form applicants are required to use when seeking information from a *trustee* about a *superannuation interest*.
431. Division 3 of Part 9 sets out the information a *trustee* must provide in response to such an application. This Division is organised firstly by type of interest followed by the phase it is in when the application is received (for example, whether the interest is in growth or *payment phase*). It also contains provisions that list additional information that must be provided if an existing *payment split* or flag applies in relation to the interest.
432. The first legislative note under section 100 explains that an order about a *superannuation interest* can only bind a *trustee* if the *trustee* has first been accorded procedural fairness, as per section 90XZD or 90YZT of the Family Law Act.
433. The second legislative note identifies that documents can be served on the *trustee*, using the relevant Rules of Court, and signposts to sections 90XZF and 90YZV of the Family Law Act. This assists readers of the 2025 Regulations to understand the different methods of serving a document to meet the requirement for the *trustee* to have been given procedural fairness. It also assists readers to understand how they can serve other relevant documents on a *trustee*, including a superannuation agreement or *flag lifting agreement*, a *splitting order*, or an application for information about a *superannuation interest*.

Section 101– Definitions

434. Section 101 provides the following defined terms that are used in Part 9:
- ***Appropriate date*** means, for information that a *trustee* must provide to an applicant, either the date the *trustee* receives an application for the information or an earlier date identified in the application.
 - ***Preserved benefits*** means:

- for members in a *regulated superannuation fund* or an *approved deposit fund*, the preserved benefits for the member under Subdivision 6.1.2 of the SIS Regulations, or
 - for members of an *RSA*, the preserved benefits for the member under Subdivision 4.1.2 of the RSA Regulations.
- ***Restricted non-preserved benefits*** means:
 - for members in a *regulated superannuation fund*, the restricted non-preserved benefits for the member under Subdivision 6.1.3 of the SIS Regulations, or
 - for members of an *RSA*, the restricted non-preserved benefits for the member under Subdivision 4.1.3 of the RSA Regulations.
 - ***Underlying valuation information*** means for a *superannuation interest* where the gross value of the interest is determined using a method or factors approved by the Minister under section 62 or 70 of the 2025 Regulations, the following information:
 - for a determination made about a *defined benefit interest* under subsections 116(2) to (5) of the 2025 Regulations, the information that is required to be provided under that determination
 - for a determination made about a *percentage-only interest* under subsection 125(2) or (3) of the 2025 Regulations, the information that is required to be provided under that determination
 - for a determination made about an *innovative superannuation interest* under subsection 131(2) or (3) of the 2025 Regulations, the information that is required to be provided under that determination, or
 - in any other case, information that allows the applicant to check if the gross value of the interest has been correctly determined.

The concept of underlying valuation information relates to multiple provisions under Part 9 that allow an applicant to make a second request for underlying valuation information about a *superannuation interest* (for example, subsection 112(2)). This may be necessary in circumstances where a *trustee* has provided a value for the interest but there is insufficient information to allow the applicant to check the value has been correctly determined.

- ***Unrestricted non-preserved benefits*** means:
 - for members in a *regulated superannuation fund* or an *approved deposit fund*, the unrestricted non-preserved benefits for the member under Subdivision 6.1.4 of the SIS Regulations, or
 - for members of an *RSA*, the unrestricted non-preserved benefits for the member under Subdivision 4.1.4 of the RSA Regulations.

Division 2—Declaration accompanying application for information about a superannuation interest

Section 102— Application to trustee for information about a superannuation interest— accompanying declaration

435. Sections 90XZB and 90YZR of the Family Law Act provide that an eligible person can make an application for information to a *trustee* of an *eligible superannuation plan* about a *superannuation interest*. Subsections 90XZB(2) and 90YZR(2) of the Family Law Act provide that the applicant must also provide a declaration and fee payable (if any) with the application.
436. Section 102 prescribes that the declaration with an application for information about a *superannuation interest* that is made by an eligible person must be in accordance with Form 6 in Schedule 1 of the 2025 Regulations. This form requires the applicant to declare that they are seeking information about the *superannuation interest* for reasons connected with Part VIII B or VIII C of the Family Law Act. This is intended to ensure that the process to obtain information about a *superannuation interest* is only used in the context of superannuation splitting under the Family Law Act.
437. Subsections 90XZB(8) and 90YZR(8) of the Family Law Act provide that an ‘eligible person’ who can make an application is a member or their legal personal representative, a spouse of the member or the spouse’s legal personal representative or a person who intends to enter into a superannuation agreement with the member.

Division 3—Information provided by trustee about superannuation interests

Subdivision A—Information about certain accumulation interests

Section 103— Accumulation interests to which this Subdivision applies

438. Subdivision A contains the provisions relevant to an interest that is an *accumulation interest*. It sets out the information that must be provided about all accumulation *superannuation interests* (see section 104 of the 2025 Regulations) and additional information that is required to be provided for an *accumulation interest* in certain circumstances (for example, when the interest is in the payment or *growth phase*).
439. Subsection 103(1) applies the provisions in Subdivision A to a *superannuation interest* that is an *accumulation interest* but not a *percentage-only interest* or an interest in a *self managed superannuation fund*. The provision also excludes circumstances where Subdivision G applies. Subdivision G relates to an application for information under section 90XZB or 90YZR of the Family Law Act that is made or served after the superannuation agreement or *flag lifting agreement*, or *splitting order* has been made. In these circumstances, a *trustee* is required to provide different information as set out in subdivision G.
440. Subsection 103(2) provides the following defined terms that are used in Subdivision A:
- ***Total member credit*** means, for a member’s *superannuation interest* and a date, the total amount that will be credited to the member for the interest if the benefit were fully vested at that date.

- **Valuation date** means, for a *superannuation interest* with a *member information statement*, the date that is stated in the statement, as the date for the value of the interest or total member credit.
- **Value** means, for a *superannuation interest* stated in a statement:
 - the value of the interest (which could be described in the statement in a number of ways including as the member’s account balance, share in the plan or *withdrawal benefit*), or
 - in the case of two or more values in the statement, the value of the benefits, before any tax is deducted, that will be paid to the member spouse if they had voluntarily ceased to be a member of the superannuation plan at the date at which the value is stated.

Section 104 – Information the trustee must provide—overview

441. Section 104 applies to *accumulation interests*.
442. Subsections 90XZB(3) and 90YZR(3) of the Family Law Act impose an obligation on a *trustee* to provide information about a *superannuation interest* if they receive an application that complies with the section, with a fine of 50 penalty units (or 250 penalty units for a body corporate) if they do not provide the information.
443. Subsection 104(1) provides a list of information the *trustee* must provide when they receive an application for information about an *accumulation interest*. It signposts to sections 106 to 108 which list additional information that the *trustee* will be required to provide if the *accumulation interest* meets certain criteria. For example, if the interest is subject to a *payment split* that has not yet been satisfied, the *trustee* must provide the information in subsection 104(1) as well as information in section 108. If the interest is in the *payment phase*, the *trustee* must also provide the information listed in section 105; and if the interest is in the *growth phase*, the information listed in sections 106 or 107 will be applicable.
444. The member’s date of birth will be required to be provided, if known, under paragraph 104(1)(j). This was not required under the 2001 Regulations. A member’s date of birth may assist the *non-member spouse* to understand when the member may be eligible to access benefits. This supports parties to negotiate an agreement or seek orders.
445. Subsection 104(2) provides that the requirements under subsection 104(1) have effect subject to any exceptions that may apply under section 109 of the 2025 Regulations. A legislative note under the subsection provides an explanation of this.

Section 105 – Specific information—the interest is in the payment phase

446. Section 105 provides a list of the additional information that a *trustee* must provide if the *accumulation superannuation interest* is in the *payment phase* at the appropriate date, as required under paragraph 104(1)(f) of the 2025 Regulations.
447. Paragraph 105(h) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors, or the method that applies in Division 2 of Part 6.

448. The section requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITAA provides definitions for the tax free and taxable *component* of a *superannuation interest*. Unlike the 2001 Regulations, section 105 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.
449. A legislative note flags that certain exceptions to providing information may apply under paragraph 109(1)(b).

Section 106 – Specific information—the interest is in the growth phase, and is an accumulation interest other than a partially vested accumulation interest

450. Section 106 lists the additional information that a *trustee* must provide if the accumulation *superannuation interest* is in the *growth phase* at the appropriate date, as required under subparagraph 104(1)(g)(i) of the 2025 Regulations.
451. The section requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITAA provides definitions for the tax free and taxable *component* of a *superannuation interest*. Unlike the 2001 Regulations, section 106 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.
452. Two legislative notes under section 106 explain how some of the categories of information operates with certain exceptions in section 109.
453. The first legislative note explains that a *trustee* is not required to provide information under paragraph 106(a) unless there is a record of it in the *trustee*'s possession, power or control. The note refers readers to the exception at paragraph 109(1)(c).
454. The second legislative note explains that the *trustee* is only required to provide the information mentioned in paragraphs 106(b) to (e) in certain circumstances as provided in paragraph 109(1)(d).

Section 107 – Specific information—the interest is in the growth phase, and is a partially vested accumulation interest

455. Section 107 list the additional information that a *trustee* must provide for a *partially vested accumulation interest* in the *growth phase* at the appropriate date, as required under subparagraph 104(1)(g)(ii).
456. Paragraph 107(1)(c) allows the *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors, or the method that applies in Schedule 4. Subsection 107(2) is enlivened if a *trustee* chooses to provide this information.
457. The section requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITTA Act provides definitions for the tax free and taxable *component* of a *superannuation interest*. Unlike the 2001 Regulations,

section 107 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.

458. Two legislative notes under subsection 107(1) clarify how some of the categories of information operate with certain exceptions in section 109.
459. The first legislative note explains that a *trustee* is not required to provide information under paragraph 107(a) unless there is a record of it in the *trustee's* possession, power or control. The note refers readers to the exception at paragraph 109(1)(c).
460. The second legislative note explains that the *trustee* is only required to provide the information mentioned in paragraphs 107(d) to (g) in certain circumstances as provided in paragraph 109(1)(d).
461. If a *trustee* has provided a gross value under paragraph 107(1)(c) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR or the Family Law Act for specific underlying information that enables them to do so. Subsection 107(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This will enable the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
462. A legislative note explains that subsection 107(2) applies when the Minister has not made a determination under subsection 109(2) that requires the *trustee* to provide information not listed under this section that will allow the applicant to check whether the gross value of the interest is correctly determined. Subsection 109(2) provides the power for the Minister to make a determination about a partially vested accumulation *superannuation interest* related to the information that a *trustee* must provide.
463. Another legislative note clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
464. Subsection 107(3) provides that if further information is provided by the *trustee* under subsection 107(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 108 – Specific information—the interest is subject to a payment split or flag

465. Section 108 lists the additional information that a *trustee* must provide if the interest is subject to any other *payment split* that has not yet been satisfied. The information must be provided for each *payment split* over a *superannuation interest*. This ensures parties are able to obtain information about any earlier *payment splits*. This is relevant as when a *splittable payment* becomes payable, the *trustee* must action *payment splits* in the order that they were made in. This information is also relevant in calculating the gross value of the superannuation interest at the relevant date under Part 6.
466. A legislative note under section 108 clarifies that the *adjusted base amount applicable to the non-member spouse* at paragraphs 108(c)(ii) and (d)(ii) refers to the

non-member spouse in relation to that *payment split*. This clarifies that there may be different *non-member spouses* in relation to different *payment splits*.

Section 109 – Exceptions and other kinds of required information

467. Subsection 109(1) provides exceptions for when a *trustee* is not required to provide information under sections 104 to 107 of the 2025 Regulations. This includes circumstances where a record of the information is not in the *trustee's* possession, power or control. This recognises that some information relating to a *superannuation interest*, particularly historical information that parties to a relationship may require about the interest, may no longer be available to *trustees*.
468. Subsection 109(2) provides a power for the Minister to determine, by legislative instrument, that a *trustee* is not required to provide some or all of the information under subsection 107(1) and/or they are instead required to provide other types of information. This power applies for a partially vested accumulation *superannuation interest* only where the Minister has approved a method or factors to be used to determine the gross value of the interest or a *component* of the interest.
469. Similarly, subsection 109(3) provides a power for the Minister to determine, by legislative instrument, that certain information under sections 104 and 105 will not be provided and/or other information must be provided. This power only applies when the Minister has approved a method or factors to determine the gross value of a *superannuation interest* under section 70 of the 2025 Regulations. Section 70 only relates to certain interests in the *payment phase*.
470. In some cases, it will not be possible for an applicant to determine the value of an interest in accordance with a method that has been approved by the Minister unless information that is additional to that required by the 2025 Regulations is known. Certain information required by the 2025 Regulations may not be necessary to value an interest in accordance with an approved method. The powers under subsections 109(2) and (3) ensures that the *trustee* is required to provide the most relevant information in relation to particular *superannuation interests*.

Subdivision B—Information about certain defined benefit interests

Section 110 – Defined benefit interests to which this Subdivision applies

471. Subdivision B contains provisions relevant to an interest that is a *defined benefit interest*. It sets out the information that must be provided about all defined benefit *superannuation interests* (see section 111) and additional information that is required to be provided for a *defined benefit interest* in certain circumstances (for example, when it is in the *payment* or *growth phase*).
472. Subsection 110(1) applies the provisions in Subdivision B to a *superannuation interest* that is a *defined benefit interest* but not a *percentage-only interest* or an interest in a *self managed superannuation fund*. The provision also excludes circumstances where Subdivision G applies. Subdivision G relates to an application for information under section 90XZB or 90YZR that is made or served after the *superannuation agreement* or *flag lifting agreement*, or *splitting order*, has been made. In these circumstances, a *trustee* is required to provide different information as set out in Subdivision G.

Section 111 – Information the trustee must provide—overview

473. Section 111 applies to *defined benefit interests*.
474. Subsections 90XZB(3) and 90YZR(3) of the Family Law Act impose an obligation on a *trustee* to provide information about a *superannuation interest* if they receive an application that complies with the respective section, with a fine of 50 penalty units (or 250 penalty units for a body corporate) if they do not provide the information.
475. Subsection 111(1) provides a list of information the *trustee* must provide when they receive an application for information about a *defined benefit interest*. This signposts to sections 112 to 115 which list additional information that the *trustee* is required to provide if the *defined benefit interest* meets certain criteria. For example, if the interest is subject to a *payment split* that has not yet been satisfied, the *trustee* must provide the information in section 115 as well as information in section 111. If the interest is in the *payment phase*, the *trustee* must also provide the information listed in section 112; and if the interest is in the *growth phase*, the information listed in section 113 or 114 will be applicable.
476. The member's date of birth is required to be provided, if known, under paragraph 111(1)(k). This was not required under the 2001 Regulations. A member's date of birth may assist the *non-member spouse* to value a *defined benefit interest* and understand when the member may be eligible to access benefits. This will support parties to negotiate an agreement or seek orders.
477. Subsection 111(2) provides that the requirements under subsection 108(1) have effect subject to any exceptions that may apply under section 116 of the 2025 Regulations. A legislative note under the subsection provides an explanation of this.

Section 112 – Specific information—the interest is in the payment phase

478. Section 112 lists the additional information that a *trustee* must provide if the *defined benefit interest* is in the *payment phase* at the appropriate date, as required under paragraph 111(1)(f) of the 2025 Regulations.
479. The section requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITAA provides definitions for the tax free and taxable *component* of a *superannuation interest*. Unlike the 2001 Regulations, section 112 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.
480. Paragraph 112(1)(h) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors, or the method that applies in Division 2 of Part 6. Subsection 112(2) will be enlivened if a *trustee* chooses to provide this information.
481. A legislative note under subsection 112(1) explains that a *trustee* is not required to provide information under paragraph 112(1)(a) or (c)(i) unless there is a record of it in the *trustee's* possession, power or control. The note refers readers of the 2025 Regulations to the exception at paragraph 116(1)(b).

482. If a *trustee* has provided a gross value under paragraph 112(1)(h) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR or the Family Law Act for specific underlying information which will enable them to do so. Subsection 112(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
483. Paragraph 112(2)(c) allows the applicant to make a further application if they require underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
484. A legislative note under subsection 112(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
485. Subsection 112(3) provides that if further information is provided by the *trustee* because of subsection 112(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 113 – Specific information—the interest is in the growth phase and held as a result of employment in which the member is still engaged

486. Section 113 lists the information that a *trustee* must provide if the *defined benefit interest* is in the *growth phase* at the appropriate date, and held by the member as a result of their current employment, as required under paragraph 111(1)(g) of the 2025 Regulations.
487. The term ‘accrued benefit multiple’, as used in paragraph 113(1)(b), is defined at section 117.
488. The section requires the *trustee* to provide both the conversion and commutation factor that will be applicable at the *member’s retirement age* noting that this will be relevant to parties in considering the effect of any superannuation agreement or *splitting order*. Parties are able to request additional information about the commutation factor under section 139 in Subdivision G, after a superannuation agreement or *flag lifting agreement*, or *splitting order*, has been made. A party may wish to do this as the member approaches the *payment phase* to support their consideration of the options available under Part 7 which will be used to determine the amount a *non-member spouse* is entitled to from each *splittable payment*.
489. Section 117 requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITAA provides definitions for the tax free and taxable *component* of a *superannuation interest*. Unlike the 2001 Regulations, section 106 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.
490. Paragraph 113(1)(q) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved

method or factors, or the method that applies in Schedule 3. Subsection 113(2) will be enlivened if a *trustee* chooses to provide this information.

491. A legislative note under subsection 113(1) explains that exceptions apply for the *trustee* to provide the categories of information in paragraph 113(1)(b), (c) or (k) in certain circumstances at paragraph 116(1)(c).
492. The second legislative note provides an example of the information that could constitute the salary information for the member under paragraph 113(1)(c).
493. If a *trustee* has provided a gross value under paragraph 113(1)(q) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that was correctly determined, the applicant may make a second application under section 90XZB or 90YZR or the Family Law Act for specific underlying information that will enable them to do so. Subsection 113(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
494. Paragraph 113(2)(c) allows the applicant to make a further application for underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
495. A legislative note under subsection 113(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZB of the Family Law Act.
496. Subsection 113(3) provides an exception for subsection 113(2) for information about the *member spouse's* accrued benefit multiple or salary figure under paragraphs 113(1)(b) and (c). The *trustee* will not be required to provide this information unless there is a record of it in their possession, power or control.
497. Subsection 113(4) provides that if further information is provided by the *trustee* under subsection 113(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 114 – Specific information—the interest is in the growth phase and held as a result of employment in which the member is no longer engaged

498. Subsection 114(1) lists the additional information that a *trustee* must provide if the *defined benefit interest* is in the *growth phase* at the appropriate date, and held by the member as a result of former employment which they are no longer engaged in, as required under paragraph 111(1)(h) of the 2025 Regulations.
499. The section lists different information depending on if the benefit is payable only as a lump sum (subsection 114(2)) or only as a *pension* (subsection 114(3)).
500. Subsection 114(4) provides that if the benefit is payable as a lump sum, a *pension* or a combination of both, the *growth phase* information includes the information at paragraphs 113(1)(d) to (e) and subsections 114(2) to (3).
501. Subsection 114(5) provides that in any case, the *growth phase* information includes the amount, if any, of the member's unrestricted non-preserved benefits at the date the information is provided and the information mentioned in paragraphs 113(1)(k),

(n) to (q) of the 2025 Regulations. This mirrors part of the list of information a *trustee* must provide should the member still be engaged in the employment giving rise to the *superannuation interest*.

502. A legislative note under subsection 114(5) explains that a *trustee* does not need to provide information about the *surcharge* debt amount in the most recent member statement (under paragraph 113(1)(k)) in certain circumstances that are provided under paragraph 116(1)(c). This exception relates to whether the *trustee* has a record of the information in their possession, power or control.

Section 115 – Specific information—the interest is subject to a payment split or flag

503. Section 115 lists the additional information that a *trustee* must provide if the *defined benefit interest* is subject to any other *payment split* that has not yet been satisfied. The information must be provided for each *payment split* of a *superannuation interest*. This ensures parties are able to obtain information about any earlier *payment splits*. This is relevant as when a *splittable payment* becomes payable, the *trustee* must action *payment splits* in the order that they were made in. This information is also relevant in calculating the gross value of the superannuation interest at the relevant date under Part 6.
504. A legislative note under paragraph 115(e) clarifies that the *adjusted base amount applicable to the non-member spouse* at paragraphs 115(c)(ii) and (d)(ii) refers to the *non-member spouse* in relation to that *payment split*. This clarifies that there may be different *non-member spouses* in relation to different *payment splits*.

Section 116 – Exceptions and other kinds of required information

505. Section 116 provides exceptions for when a *trustee* is not required to provide information under sections 111 to 114 of the 2025 Regulations. This includes circumstances where a record of the information is not in the *trustee's* possession, power or control. This recognises that some information relating to a *superannuation interest*, particularly historical information that parties to a relationship may require about the interest, may no longer be available to *trustees*.
506. Subsections 116(2) to (5) provide the power for the Minister to determine, by legislative instrument, that a *trustee* is not required to provide some or all of the information required under the 2025 Regulations and/or the *trustee* is required to provide other types of information.
507. This power will apply to *defined benefit interests*, interests made up of a *defined benefit interest component* and an *accumulation interest component* (including partially vested accumulation) and an interest in the *payment phase*, provided the Minister has approved a method or factors to be used to determine the gross value of the interest or a *component* of the interest under section 62 or 70.
508. In some cases, it will not be possible for an applicant to determine the value of an interest in accordance with a method that has been approved by the Minister unless information that is additional to that required by the 2025 Regulations is known. Certain information required by the 2025 Regulations may not be necessary to value an interest in accordance with an approved method. The powers under subsections 116(2) to (5) ensure that the *trustee* is required to provide the most relevant information in relation to particular *superannuation interests*.

509. Two legislative notes clarify that where there are two *components*, the Subdivision will only apply to the *superannuation interest* if one of the *components* is a *defined benefit interest*. The note refers readers to section 110 of the 2025 Regulations.

Section 117 – Interest is in the growth phase and held as a result of employment in which the member is still engaged—meaning of *accrued benefit multiple*

510. Subsection 117(1) provides the method to determine the *accrued benefit multiple* that the *trustee* will be required to provide under paragraph 113(1)(b).

Paragraph 113(1)(b) provides that a *trustee* must provide information about the *member spouse's* accrued benefit multiple for any lump sum or *pension* that is payable for the *defined benefit interest* in the *growth phase*.

511. Subsection 117(2) provides that if the governing rules of the plan define the accrued benefit multiple, then that is the multiple.

512. However, the governing rules of the plan may not define the accrued benefit multiple. In these circumstances, subsection 117(3) provides that if the governing rules define a multiple that is used to define the benefit payable to the member at the appropriate date, then that is the multiple.

513. When there is no accrued benefit multiple or multiple defined under the governing rules, subsection 117(4) provides a formula that is to be used to calculate the accrued benefit multiple. The defined terms in the formula are:

- ***Multiple to calculate retirement benefit*** means:
 - for a benefit that is payable as a lump sum to the member, the multiple that will be applied to the member's salary figure at their earliest retirement date, when calculating the lump sum retirement benefit, or
 - for a benefit that is payable as a *pension*, the multiple that will be applied to the member's salary figure at their earliest retirement date, when calculating the *pension* benefit.
- ***First period*** means the period beginning either on the earlier of the day the member first joins the superannuation plan or the day their benefit began to accrue. The period ends on the day before the appropriate date.
- ***Second period*** means the period starting on the earlier of the day the member first joins the superannuation plan or the day their benefit began to accrue. The period ends on the day before the member's earliest retirement date.
- ***Member's earliest retirement date*** means the first date the member could retire and become eligible to be paid their retirement benefits for their *superannuation interest* in the plan. The governing rules provides the eligibility criteria.

514. Subsection 117(5) provides an assumption for the formula at subsection 117(4), when the amount of the benefit to the member, according to the governing rules of the plan, depends on the amount of contributions that member makes to the plan. If a rate of contributions is not identified in the plan's governing rules, then the subsection assumes that either:

- the member has contributed to the plan at a standard rate under the governing rules, unless the member elects another rate, or
- where there are a range of rates in the governing rules, the member has contributed to the plan at the mid-point of that range, unless the member elects another rate.

Subdivision C—Information about certain percentage-only interests

Section 118 – Percentage-only interests to which this Subdivision applies

515. Subdivision C contains provisions relevant to an interest that is a *percentage-only interest* (excluding an interest in a *self managed superannuation fund*). It sets out the information that must be provided about all *percentage-only superannuation interests* (see section 119) and additional information that is required to be provided for a *percentage-only interest* in certain circumstances (for example, when the interest is in the payment or *growth phase*).
516. Section 118 applies the provisions in Subdivision C to a *superannuation interest* that is a *percentage-only interest*, but not an interest in a *self managed superannuation fund*. The provision also excludes circumstances where Subdivision G applies. Subdivision G relates to an application for information under section 90XZB or 90YZR that is made or served after the superannuation agreement or *flag lifting agreement*, or *splitting order*, has been made. In these circumstances, a *trustee* is required to provide different information as set out in subdivision G.

Section 119 – Information the trustee must provide—overview

517. Section 119 applies to *percentage-only interests*.
518. Subsections 90XZB(3) and 90YZR(3) of the Family Law Act impose an obligation on a *trustee* to provide information about a *superannuation interest* if they receive an application that complies with the respective section, with a fine of 50 penalty units (or 250 penalty units for a body corporate) if they do not provide the information.
519. Section 119 provides a list of information the *trustee* must provide when they receive an application for information about a *percentage-only interest*. It signposts to sections 120 to 124 which list additional information that the *trustee* is required to provide if the *percentage-only interest* meets certain criteria. For example, if the interest is subject to a *payment split* that has not yet been satisfied, the *trustee* must provide the information in section 124 as well as information in section 119. If the interest is in the *payment phase*, the *trustee* must also provide the information listed in section 120 or 121 as applicable, and if the interest is in the *growth phase*, the information listed in section 122 or 123 will be applicable.
520. The member's date of birth is required to be provided, if known, under paragraph 119(1)(l). This was not required under the 2001 Regulations. A member's date of birth may assist the *non-member spouse* to understand when the member may be eligible to access benefits. This supports parties to negotiate an agreement or seek orders.
521. Subsection 119(2) provides that the requirements under subsection 119(1) have effect subject to any exceptions that may apply under section 125 of the 2025 Regulations. A legislative note under the subsection provides an explanation of this.

Section 120 – Specific information—the interest is in the payment phase and the member is receiving ongoing pension payments

522. Section 120 lists the additional information that must be provided by the *trustee* if the *percentage-only interest* is in the *payment phase* at the appropriate date and the member is receiving ongoing pension payments, as required under paragraph 119(1)(f) of the 2025 Regulations.
523. Paragraph 120(1)(d) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors. The 2025 Regulations do not provide methods or factors to determine the gross value of a *percentage-only interest* and therefore unless the Minister has approved a method or factors to value these interests under section 70, a *trustee* will not be able to provide the information under this section. Section 70 relates to the approval of methods or factors for interests in the *payment phase*. Subsection 120(2) will be enlivened if a *trustee* chooses to provide this information.
524. A legislative note under subsection 120(1) explains that a *trustee* is not required to provide information under paragraph 120(1)(a) or subparagraph 120(1)(c)(i) unless there is a record of it in the *trustee*'s possession, power or control. The note refers readers of the 2025 Regulations to the exception at paragraph 125(1)(b).
525. If a *trustee* has provided a gross value under paragraph 120(1)(d) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR or the Family Law Act for specific underlying information that will enable them to do so. Subsection 120(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
526. Paragraph 120(2)(c) allows the applicant to make a further application for underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
527. A legislative note under subsection 120(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
528. Subsection 120(3) provides that if further information is provided by the *trustee* because of subsection 120(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 121 – Specific information—the interest is a superannuation annuity in the payment phase and the member is receiving ongoing benefits

529. Section 121 lists the additional information that must be provided by the *trustee* if the *percentage-only interest* is a *superannuation annuity* and in the *payment phase* at the appropriate date, as required under paragraph 119(1)(g) of the 2025 Regulations.
530. Paragraph 121(1)(d) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors. The 2025 Regulations do not provide methods or factors to

determine the gross value of a *percentage-only interest* and therefore unless the Minister has approved a method or factors to value these interests under section 70, a *trustee* will not be able to provide the information under this section. Section 70 relates to the approval of methods or factors for interests in the *payment phase*. Subsection 121(2) will be enlivened if a *trustee* chooses to provide this information.

531. A legislative note under subsection 121(1) explains that a *trustee* is not required to provide information under paragraph 120(1)(a) or subparagraph 120(1)(c)(i) unless there is a record of it in the *trustee's* possession, power or control. The note refers readers of the 2025 Regulations to the exception at paragraph 125(1)(b).
532. If a *trustee* has provided a gross value under paragraph 121(1)(d) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR of the Family Law Act for specific underlying information that will enable them to do so. Subsection 121(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
533. Paragraph 121(2)(c) allows the applicant to make a further application for underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
534. A legislative note under subsection 121(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
535. Subsection 121(3) provides that if further information is provided by the *trustee* because of subsection 121(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 122 – Specific information—the interest is in the growth phase and is not an interest in a deferred annuity

536. Section 122 lists the additional information that a trustee must provide if the *percentage-only interest* is a *superannuation annuity* that is not a *deferred annuity*, and is in the *growth phase* at the appropriate date, as required under paragraph 119(1)(h) of the 2025 Regulations.
537. The section requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITAA provides definitions for the tax free and taxable *component* of a *superannuation interest*. Unlike the 2001 Regulations, section 122 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.
538. Paragraph 122(1)(g) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors. The 2025 Regulations do not provide methods or factors to determine the gross value of a *percentage-only interest* and therefore unless the

Minister has approved a method or factors to value these interests under section 62, a *trustee* will not be able to provide the information under this section. Section 62 relates to the approval of methods or factors for interests in the *growth phase*. Subsection 122(2) will be enlivened if a *trustee* chooses to provide this information.

539. A legislative note under subsection 122(1) explains that a *trustee* is not required to provide information under paragraph 122(1)(c) unless there is a record of it in the *trustee's* possession, power or control. The note refers readers of the 2025 Regulations to the exception at paragraph 125(1)(b).
540. If a *trustee* has provided a gross value under paragraph 122(1)(g) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR of the Family Law Act for specific underlying information that will enable them to do so. Subsection 122(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
541. Paragraph 122(2)(c) allows the applicant to make a further application for underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
542. A legislative note under subsection 122(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
543. Subsection 122(3) provides that a *trustee* does not have to provide specific categories of underlying valuation information in response to an additional application made under subsection 122(2).
544. Subsection 122(4) provides that if further information is provided by the *trustee* because of subsection 122(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 123 – Specific information—the interest is in a deferred annuity and is in the growth phase

545. Section 123 lists the additional information that a *trustee* must provide if the *percentage-only interest* is in a *deferred annuity* in the growth phase at the appropriate date, as required under paragraph 119(1)(i) of the 2025 Regulations.
546. Paragraph 123(1)(b), by referencing paragraph 122(1)(g), allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors. The 2025 Regulations do not provide methods or factors to determine the gross value of a *percentage-only interest* and therefore unless the Minister has approved a method or factors to value these interests under section 62, a *trustee* will not be able to provide the information under this section. Section 62 relates to the approval of methods or factors for interests in the *growth phase*. Subsection 123(2) will be enlivened if a *trustee* chooses to provide this information.

547. A legislative note under subsection 123(1) explains that a *trustee* is not required to provide information under paragraph 123(1)(a) unless there is a record of it in the *trustee's* possession, power or control. The note refers readers of the 2025 Regulations to the exception at paragraph 125(1)(b).
548. If a *trustee* has provided a gross value under paragraphs 123(1)(b) and 122(1)(g) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR of the Family Law Act for specific underlying information that will enable them to do so. Subsection 123(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
549. Paragraph 123(2)(c) allows the applicant to make a further application for underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
550. A legislative note under subsection 123(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
551. Subsection 123(3) provides that if further information is provided by the *trustee* because of subsection 123(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 124 – Specific information—the interest is subject to a payment split or flag

552. Section 124 lists additional information that a *trustee* must provide if the *percentage-only interest* is subject to any other *payment split* that has not yet been satisfied. The information must be provided for each *payment split* of a *superannuation interest*. This ensures that parties are able to obtain information about any earlier *payment splits*. This is relevant as when a *splittable payment* becomes payable, the *trustee* must action *payment splits* in the order that they were made in. This information is also relevant in calculating the gross value of the superannuation interest at the relevant date under Part 6.

Section 125 – Exceptions

553. Section 125 provides exceptions for when a *trustee* is not required to provide information under sections 119 to 123 of the 2025 Regulations. This includes circumstances where a record of the information is not in the *trustee's* possession, power or control. This recognises that some information relating to a *superannuation interest*, particularly historical information that parties to a relationship may require about the interest, may no longer be available to *trustees*.
554. Subsections 125(2) and (3) provides the power for the Minister to determine, by legislative instrument, that a *trustee* is not required to provide some or all of the information required under the 2025 Regulations and/or the *trustee* is required to provide other types of information. This power applies for a *percentage-only interest* only where the Minister has approved a method or factors to be used to determine the gross value of the interest or a *component* of the interest.

555. In some cases, it will not be possible for an applicant to determine the value of an interest in accordance with a method that has been approved by the Minister unless information that is additional to that required by the 2025 Regulations is known. Certain information required by the 2025 Regulations may not be necessary to value an interest in accordance with an approved method. The powers under subsections 125(2) and (3) ensures that the *trustee* is required to provide the most relevant information in relation to particular *superannuation interests*.

Subdivision D—Information about certain innovative superannuation interests

Section 126 – Innovative superannuation interests to which this Subdivision applies

556. Subdivision D contains provisions relevant to a *superannuation interest* that is an *innovative superannuation interest*, or a *component* of a superannuation interest that is an *innovative superannuation interest*. Subdivision D does not apply to a superannuation interest that is a *percentage-only interest* or an interest in a *self managed superannuation fund*. The Subdivision sets out the information that must be provided about all *defined benefit interests* (see section 127) and additional information that is required to be provided for a *defined benefit interest* in certain circumstances (for example, when it is in the payment or *growth phase*).

557. *Innovative superannuation interests* are a category of lifetime superannuation products established under regulation 1.06A of the SIS Regulations. They are a recent type of product designed to provide consumers with greater choice and flexibility in retirement product options. They cover a range of lifetime products that did not meet the annuity and *pension* standards prior to 1 July 2017. Benefits with respect to an *innovative superannuation interest* may take the form of either a *pension* or annuity payments.

558. Subdivision D has been modelled on Subdivision B for *defined benefit interests*. The 2001 Regulations do not contain separate provisions covering the types of information a *trustee* must provide for *innovative superannuation interests* noting they are a more recent type of retirement product. Subdivision D ensures *innovative superannuation interests* are treated consistently with other *superannuation interests*.

559. Section 126 applies the provisions in Subdivision D to a *superannuation interest* that is an *innovative superannuation interest* that is not a *percentage-only interest* or in a *self managed superannuation fund*. This means that Subdivision D does not apply to annuities. Although annuities are considered to be *innovative superannuation interests*, they are deemed to be *percentage-only interests* by operation of section 11 and therefore dealt with under Subdivision C of Part 9.

560. Section 126 also excludes circumstances where Subdivision G applies. Subdivision G relates to an application for information under section 90XZB or 90YZR of the Family Law Act that is made or served after the superannuation agreement or *flag lifting agreement*, or *splitting order*, has been made. In these circumstances, the *trustee* will be required to provide different information as set out in Subdivision G.

Section 127 – Information the trustee must provide—overview

561. Section 127 applies to *innovative superannuation interests*.

562. Subsections 90XZB(3) and 90YZR(3) of the Family Law Act impose an obligation on a *trustee* to provide information about a *superannuation interest* if they receive an

application that complies with the section, with a fine of 50 penalty units (or 250 penalty units for a body corporate) if they do not provide the information.

563. Subsection 127(1) provides a list of information the *trustee* must provide when they receive an application for information about an *innovative superannuation interest*. It signposts to sections 128 to 130 which list additional information that the *trustee* will be required to provide if the *innovative superannuation interest* meets certain criteria. For example, if the interest is subject to a *payment split* that has not yet been satisfied, the *trustee* must provide the information in section 130 as well as the information in section 127. If the interest is in the *payment phase*, the *trustee* must also provide the information listed in section 128; and if the interest is in the *growth phase*, the information listed in section 129 will be applicable.
564. The member's date of birth will be required to be provided, if known, under paragraph 127(1)(j). A member's date of birth may assist the *non-member spouse* to value an *innovative superannuation interest* and understand when the member may be eligible to access benefits. This will support parties to negotiate an agreement or orders.
565. Subsection 127(2) provides that the requirements under subsection 127(1) have effect subject to any exceptions that may apply under section 131 of the 2025 Regulations. A legislative note under the subsection provides an explanation of this.
566. A legislative note also directs readers of the 2025 Regulations to section 141, which exempts certain *secondary government trustees* from providing information under Division 3. A *secondary government trustee* is a *trustee* that is only a *trustee* because of the operation of section 90XDA or 90YF of the Family Law Act. Those sections operate to extend the meaning of *trustee* to a person who is not the *trustee* of an *eligible superannuation plan*, but who nevertheless has the power to make payments to members of the plan.

Section 128 – Specific information—the interest is in the payment phase

567. Section 128 lists the additional information that must be provided by the *trustee* when the *innovative superannuation interest* is in the *payment phase* at the appropriate date, as required by paragraph 127(1)(f) of the 2025 Regulations.
568. The section requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITAA provides definitions for the tax free and taxable *component* of a *superannuation interest*. Section 128 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.
569. Paragraph 128(1)(g) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors. The 2025 Regulations do not provide methods or factors to determine the gross value of *innovative superannuation interests* and therefore unless the Minister has approved a method or factors to value these interests under section 70, a *trustee* will not be able to provide the information under this section. Section 70

relates to the approval of methods or factors for interests in the *payment phase*. Subsection 128(2) is enlivened if a *trustee* chooses to provide this information.

570. If a *trustee* has provided a gross value under paragraph 128(1)(g) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR or the Family Law Act for specific underlying valuation information that will enable them to do so. Subsection 128(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the trustee in response to the first application without unnecessary delay.
571. Paragraph 128(2)(c) allows the applicant to make a further application for underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
572. A legislative note under subsection 128(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
573. Subsection 128(3) provides that if further information is provided by the *trustee* because of subsection 128(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 129 – Specific information—the interest is in the growth phase

574. Section 129 lists the additional information that must be provided by the *trustee* when the *innovative superannuation interest* is in the *growth phase* at the appropriate date, as required by paragraph 127(1)(g) of the 2025 Regulations.
575. The section requires the *trustee* to provide taxation *component* information for a superannuation lump sum as if it had been paid on the date the information is provided. Division 307 of the ITAA provides definitions for the tax free and taxable *component* of a *superannuation interest*. Section 129 requires the *trustee* to provide information about each of the elements of the taxable *component* (if applicable). The taxed element and untaxed element are a subset of the taxable *component*. This provides applicants with a more comprehensive understanding of the taxable nature of the *superannuation interest*.
576. Paragraph 129(1)(h) allows a *trustee* to provide, if requested, and if they choose to do so, the gross value of the interest as determined in accordance with an approved method or factors. The 2025 Regulations do not provide methods or factors to determine the gross value of *innovative superannuation interests* and therefore unless the Minister has approved a method or factors to value these interests under section 62, a *trustee* will not be able to provide the information under this section. Section 62 relates to the approval of methods or factors for interests in the *growth phase*. Subsection 129(2) will be enlivened if a *trustee* chooses to provide this information.
577. A legislative note under subsection 129(1) explains that a *trustee* is not required to provide information under paragraph 129(1)(d) in certain circumstances. The note refers readers of the 2025 Regulations to the exception at paragraph 131(1)(b) which relates to where information is not in the *trustee's* possession, power or control.

578. If a *trustee* has provided a gross value under paragraph 129(1)(h) using an approved method or factors, but has not provided sufficient information to enable the applicant to check if that value was correctly determined, the applicant may make a second application under section 90XZB or 90YZR of the Family Law Act for specific underlying information that will enable them to do so. Subsection 129(2) provides that if a person makes a second application for information in these circumstances, then the *trustee* is required to provide that information in a reasonable time. This enables the person to understand the valuation provided by the *trustee* in response to the first application without unnecessary delay.
579. Paragraph 129(2)(c) allows the applicant to make a further application for underlying valuation information. This term is a defined term at section 101 of the 2025 Regulations.
580. A legislative note under subsection 129(2) clarifies that additional applications for further information may be made under section 90XZB or 90YZR of the Family Law Act.
581. Subsection 129(3) provides that if further information is provided by the *trustee* because of subsection 129(2), then subsection 140(2) applies to that document. Subsection 140(2) allows the document to be evidence of the information stated in it.

Section 130 – Specific information—the interest is subject to a payment split or flag

582. Section 130 lists additional information that a *trustee* must provide if the *innovative superannuation interest* is subject to any other *payment split* that has not yet been satisfied. The information must be provided for each *payment split* of a *superannuation interest*. This ensures that parties are able to obtain information about any earlier *payment splits*. This is relevant as when a *splittable payment* becomes payable, the *trustee* must action *payment splits* in the order that they were made in. This information is also relevant in calculating the gross value of the superannuation interest at the relevant date under Part 6.
583. A legislative note under paragraph 130(e) clarifies that the *adjusted base amount applicable to the non-member spouse* at paragraphs 130(c)(ii) and (d)(ii) refers to the *non-member spouse* in relation to that *payment split*. This clarifies that there may be different *non-member spouses* in relation to different *payment splits*.

Section 131 – Exceptions and other kinds of required information

584. Section 131 provides exceptions for when a *trustee* is not required to provide information under sections 127 to 129 of the 2025 Regulations. This includes circumstances where a record of the information is not in the *trustee's* possession, power or control. This recognises that some information relating to a *superannuation interest*, particularly historical information that parties to a relationship may require about the interest, may no longer be available to *trustees*.
585. Subsections 131(2) and (3) provides the power for the Minister to determine, by legislative instrument, that a *trustee* is not required to provide some or all of the information required under the 2025 Regulations and/or the *trustee* is required to provide other types of information.

586. This power applies to an *innovative superannuation interest* provided the Minister has approved a method or factors to be used to determine the gross value of the interest or a *component* of the interest under section 62 or 70.
587. In some cases, it will not be possible for an applicant to determine the value of an interest in accordance with a method that has been approved by the Minister unless information that is additional to that required by the 2025 Regulations is known. Certain information required by the 2025 Regulations may not be necessary to value an interest in accordance with an approved method. The powers under subsections 131(2) and (3) ensures that the *trustee* is required to provide the most relevant information in relation to particular *superannuation interests*.

Subdivision E—Information about interests in self managed superannuation funds

Section 132 – Interests in self managed superannuation funds to which this Subdivision applies

588. Subdivision E contains provisions relevant to an interest that is in a *self managed superannuation fund*. It sets out the information that must be provided about interests in a *self managed superannuation fund* and additional information that is required to be provided for such an interest in certain circumstances (for example, when the interest is in the *payment phase*).
589. Section 132 applies the provisions in Subdivision E to a *superannuation interest* that is in a *self managed superannuation fund*. The provision excludes circumstances where Subdivision G applies. Subdivision G relates to an application for information under section 90XZB or 90YZR of the Family Law Act that is made or served after the superannuation agreement or *flag lifting agreement*, or *splitting order*, has been made. In these circumstances, a *trustee* is required to provide different information as set out in subdivision G.

Section 133 – Information the trustee must provide—overview

590. Section 133 applies to interests in a *self managed superannuation fund*.
591. Subsections 90XZB(3) and 90YZR(3) of the Family Law Act impose an obligation on a *trustee* to provide information about a *superannuation interest* if they receive an application that complies with the respective section, with a fine of 50 penalty units (or 250 penalty units for a body corporate) if they do not provide the information.
592. Section 133 provides a list of information the *trustee* must provide when they receive an application for information about an interest in a *self managed superannuation fund*. It signposts to sections 134 and 135 which list additional information that the *trustee* is required to provide if the *percentage-only interest* meets certain criteria. For example, if the interest is subject to a *payment split* that has not yet been satisfied, the *trustee* must provide the information in section 135 as well as information in section 133. If the interest is in the *payment phase*, the *trustee* must also provide the information listed in section 134.
593. The member's date of birth is required to be provided, if known, under paragraph 133(1)(k). This was not required under the 2001 Regulations. A member's date of birth may assist the *non-member spouse* to understand when the member may be eligible to access benefits. This supports parties to negotiate an agreement or seek orders.

594. Subsection 133(2) provides that the requirements under subsection 133(1) have effect subject to any exceptions that may apply under section 136 of the 2025 Regulations. A legislative note under the subsection provides an explanation of this.

Section 134 – Specific information—the interest is in the payment phase and the member is receiving ongoing pension payments

595. Section 134 lists the additional information that must be provided by the *trustee* when a *superannuation interest* in a *self managed superannuation fund* is in the *payment phase* at the appropriate date and the member is receiving ongoing *pension* payments, as required by paragraph 133(1)(f) of the 2025 Regulations.
596. A legislative note explains that a *trustee* is not required to provide information under paragraph 134(a) or subparagraph 134(c)(i) unless there is a record of it in the *trustee's* possession, power or control. The note refers readers of the 2025 Regulations to the exception at paragraph 136(b).

Section 135 – Specific information—the interest is subject to a payment split or flag

597. Section 135 lists additional information that a *trustee* must provide if the *innovative superannuation interest* is subject to any other *payment split* that has not yet been satisfied. The information must be provided for each *payment split* of a *superannuation interest*. This ensures that parties are able to obtain information about any earlier *payment splits*. This is relevant as when a *splittable payment* becomes payable, the *trustee* must action *payment splits* in the order that they were made in. This information is also relevant in calculating the gross value of the superannuation interest at the relevant date under Part 6.
598. A legislative note under paragraph 135(e) clarifies that the *adjusted base amount applicable to the non-member spouse* at paragraphs 135(c)(ii) and (d)(ii) refers to the *non-member spouse* in relation to that *payment split*. This clarifies that there may be different *non-member spouses* in relation to different *payment splits*.

Section 136 - Exceptions

599. Section 136 provides exceptions for when a *trustee* is not required to provide information under section 133 or 134 of the 2025 Regulations. This includes circumstances where a record of the information is not in the *trustee's* possession, power or control. This recognises that some information relating to a *superannuation interest*, particularly historical information that parties to a relationship may require about the interest, may no longer be available to *trustees*.

Subdivision F—Information about small superannuation accounts interests

Section 137 – Interests in small superannuation accounts to which this Subdivision applies

600. Subdivision F provides the information requirements relevant to an interest that is in a superannuation plan that falls under the definition of an account under the Small Super Accounts Act. These are inactive superannuation accounts with low balances that have been transferred to the Australian Taxation Office to protect the balance from being eroded by ongoing fees within a *superannuation fund*. The Small Superannuation Accounts Act has provisions relating to *payment splitting* under the Family Law Act.

601. Subsections 90XZB(3) and 90YZR(3) of the Family Law Act impose an obligation on a *trustee* to provide information about a *superannuation interest* if they receive an application that complies with the respective section, with a fine of 50 penalty units (or 250 penalty units for a body corporate) if they do not provide the information.
602. Subsection 137(2) requires a *trustee* to provide a statement of the account balance at the date the *trustee* receives an application for superannuation information, and if known, the member's date of birth.
603. A member's date of birth may assist the *non-member spouse* to understand when the member may be eligible to access benefits. This supports parties to negotiate an agreement or seek orders.

Subdivision G—Information about certain interests for which an agreement or splitting order applies

Section 138 – Interests to which this Subdivision applies

604. Subdivision G applies where a person makes an application for information under section 90XZB or 90YZR of the Family Law Act after a superannuation agreement, *flag lifting agreement* or *splitting order* has been served on the *trustee*. This Subdivision does not apply in circumstances where there are agreements or splits that relate to an earlier *marriage* or de facto relationship. The Subdivision operates to list specific information that must be provided in particular circumstances. Those circumstances are specified in subsections 138(2) and (3) as being where the agreement or order:
- relates to a *base amount* split
 - does not relate to an earlier *marriage* or de facto relationship, and
 - has not been set aside.

Section 139 – Information the trustee must provide

605. Subsections 90XZB(3) and 90YZR(3) of the Family Law Act impose an obligation on a *trustee* to provide information about a *superannuation interest* if they receive an application that complies with the respective section, with a fine of 50 penalty units (or 250 penalty units for a body corporate) if they do not provide the information.
606. Section 139 requires the *trustee* to provide certain information in response to an application for information made by the *non-member spouse* that meets the requirements in section 138. The *trustee* must provide the commutation factor for converting any *pension* entitlements of the member spouse to a lump sum applicable at the date the *trustee* received the application, and the factor applicable at that date for the following two years. Commutation factors are used to convert an entitlement, that would have otherwise been payable as a *pension*, to a lump sum in certain circumstances. These factors are relevant as they impact the amount a member spouse may receive as a *splittable payment*, as well as the amount a *non-member spouse* may be entitled to (see Part 7).
607. It is important that the *non-member spouse* can access this information at a time the member spouse is approaching the preservation age as they may be considering their options under Part 7 which determine the amount a *non-member spouse* is entitled to from each *splittable payment*. Some provisions in Part 7 allow the *non-member*

spouse to require the member spouse to commute some of their *pension* into a lump sum.

Subdivision H—How and when trustee must provide information

Section 140 – How and when a trustee must provide information

608. Subsection 140(1) provides that a *trustee* must provide information about a *superannuation interest* that has been requested using an application form, in a document addressed to the applicant and given to the applicant within a reasonable time after receiving the application.
609. A legislative note under subsection 140(1) signposts that the definition of *document* is in section 2B of the AIA. That definition means any record of information.
610. The legislative note also signposts that the ways of giving a document to a person are identified in sections 28A and 29 of the AIA. Generally, this means providing the information personally, or by post, to a person or body corporate.
611. Subsection 140(2) ensures the document the *trustee* provides to the application is evidence of the information stated in it, and that the document was provided to the applicant.

Subdivision I—Certain secondary government trustees not required to provide information

Section 141 - Certain secondary government trustees not required to provide information

612. Section 90XD of the Family Law Act defines a *secondary government trustee* as a *trustee* that is the Commonwealth, or a State or Territory, but is only a *trustee* because of section 90XDA of the Act. Section 90XDA provides that a person who has power to make payments to members of an *eligible superannuation plan* shall be a *trustee*. This means that such a person is are bound by any superannuation agreement, *flag lifting agreement* or *splitting order*. Equivalent provisions exist in sections 90YD and 90YF for Western Australian de facto couples who split their superannuation after separation.
613. Subsection 141(1) provides that a *secondary government trustee* is not required to provide any information in response to an application for superannuation information under subsection 90XZB(3) or 90YZR(3) of the Family Law Act, nor are they required to provide information about a *superannuation interest* of a member of the plan.
614. Excluding *secondary government trustees* is necessary. While these *trustees* may have the power to make payments to members, they may not necessarily have access to the categories of information that must be provided in response to an application for superannuation information.
615. Subsection 141(2) provides that subsection 141(1) does not apply to a *secondary government trustee* of the scheme under the *Parliamentary Contributory Superannuation Act 1948*. A *secondary government trustee* for this scheme must provide information in accordance with Part 9 of the 2025 Regulations.

Subdivision J—Information provided by trustee to non-member spouse

Section 142 – Information to be provided to the non-member spouse by the trustee after service of agreement or order

616. Subsections 90XZB(7) and 90YZR(7) of the Family Law Act allow the 2025 Regulations to require a *trustee* to provide information to a *non-member spouse* after they have received the agreement or order. It allows the 2025 Regulations to prescribe penalties for contravention that do not exceed 10 penalty units.
617. Section 142 requires a *trustee* to provide certain information as soon as practicable after the *operative time* to the *non-member spouse* about the interest. *Operative time* is defined in the Family Law Act.
618. Subsection 142(1) provides that a *trustee* contravenes the subsection when they are served with a superannuation agreement or *flag lifting agreement*, or *splitting order*, and they do not provide the information listed in subsection 142(2) in writing to the *non-member spouse* as soon as practicable after the *operative time* for the *payment split*.
619. A *trustee* of an interest in a *regulated superannuation fund*, an *approved deposit fund*, *RSA*, or an account within the meaning of the Small Super Accounts Act are exempt from providing the information specified in subsection 142(2).
620. Subsection 142(2) lists the information that a *trustee* must provide to the *non-member spouse*.

Section 143 – Information to be provided to non-member spouse by the trustee at end of each financial year

621. Subsections 90XZB(7) and 90YZR(7) of the Family Law Act provide that regulations may require a *trustee* to provide information to a *non-member spouse* after they have received the agreement or order. It allows the 2025 Regulations to prescribe penalties for contravention that do not exceed 10 penalty units.
622. Section 143 requires the *trustee* to provide certain information to the *non-member spouse* at the end of every financial year whilst the interest is in the *growth phase*. This differs from the *trustee*'s obligations under section 142 that impose a one-off requirement on the *trustee* to provide information shortly after a superannuation agreement, *flag lifting agreement* or *splitting order* is made. Section 143 provides an ongoing obligation on the *trustee* to keep the *non-member spouse* informed of the nature of the interest noting the *non-member spouse* will not receive regular member statements.
623. This obligation does not apply where the interest is in a *regulated superannuation fund*, or a *percentage-only interest*. It only applies where the agreement or order specifies a *base amount split*.
624. Subsection 143(1) provides that a *trustee* contravenes the subsection if they do not provide certain information to the *non-member spouse* within 6-months of the end of each financial year whilst the interest is in the *growth phase*.
625. Subsections 90XZB(7) and 90YZR(7) of the Family Law Act provide the option for the 2025 Regulations to prescribe up to 10 penalty units when a *trustee* contravenes

the subsection. Subsection 143(1) prescribes 1 penalty unit for contravention. The *Crimes Act 1914* provides for the amount of a penalty unit.

626. Subsection 143(2) lists the information that a *trustee* must provide to the *non-member spouse*.

Subdivision K – Information provided by non-member spouse to trustee

Section 144 – Notice to trustee by or for non-member spouse

627. Section 144 requires a *non-member spouse* to provide certain information to the *trustee* of a superannuation plan as soon as practicable after the agreement or order is served or made. This is necessary to ensure the *trustee* can fulfil their own obligations to provide certain information to the *non-member spouse* under Subdivision J, and carry out their obligations under the agreement or order (for example, to pay an amount to the *non-member spouse* from *splittable payments*).
628. Subsection 144(1) requires a *non-member spouse* to provide the *trustee* the information set out in subsection 144(2) in circumstances where there is a *superannuation interest* that is subject to a *payment split* or flag.
629. Subsection 144(2) lists the information that a *non-member spouse* must provide to the *trustee*. The 2025 Regulations contains provisions that are intended to facilitate safer communication between *non-member spouses* and superannuation *trustees* after *payment splitting*. Subsection 144(2)(c) allows a *non-member spouse* to provide the *trustee* with either an email address or a postal address, instead of only a postal address (as the 2001 Regulations required). It will also alternatively allow the *non-member spouse* to provide the email or postal address of a representative they have nominated under paragraph 144(2)(b).
630. Allowing *non-member spouses* to designate an independent third party as an intermediary may help mitigate the risk of systems abuse, protect the safety of *non-member spouses*, and may help to limit the perpetuation of family violence via inappropriate access to personal details, particularly where the member spouse is both a party to the splitting agreement or orders and also the *trustee* of the fund that must give effect to the splitting agreement or orders (as is the case for *self managed superannuation funds*).
631. Subsection 144(3) provides that the *non-member spouse* must give the notice to the *trustee* as soon as practicable after a superannuation agreement, *flag lifting agreement* or *payment flag* is served on the *trustee*, or the day the *splitting order* is made.
632. The requirement for the *non-member spouse* to provide current information to the *trustee* is ongoing. Subsection 144(4) provides that the *non-member spouse* must notify the *trustee* of any changes to their information as soon as practicable. Paragraph 144(4)(b) allows the *trustee* to, at their discretion, accept notification of any changes in a format other than in writing (for example, verbally).

Part 10—Transitional arrangements

Division 1—Transitional arrangements for the commencement of this instrument

Section 145 – Things done under the *Family Law (Superannuation) Regulations 2001*

633. This provision enables actions taken under the 2001 Regulations to still have effect after commencement of the 2025 Regulations, and assists in ensuring a smooth transition between the 2001 Regulations and the 2025 Regulations.
634. Subsection 145(1) provides that anything done under the 2001 Regulations immediately before it was repealed, and could be done for that purpose under this instrument, is deemed to have effect as if it had been done under this instrument.
635. Subsection 145(2) provides a non-exhaustive list of examples of what a thing under subsection 145(1) might be, including an approval, notice, application or other instrument made or given.
636. A legislative note provides an example of a Minister’s approval under section 38 of the 2001 Regulations as an instrument that will continue to have effect under the 2025 Regulations.
637. A table providing a comparison of the provision numbers between the 2001 Regulations and the 2025 Regulations is at **Attachment C**.

Section 146 – Only certain superannuation interests in the scheme constituted by the *Parliamentary Contributory Superannuation Act 1948* are covered by subparagraph 14(1)(b)(ii) of this instrument

638. Section 146 provides that subparagraph 14(1)(b)(ii) only applies in certain circumstances, to deem *superannuation interests* under the *Parliamentary Contributory Superannuation Act 1948* as an *unsplittable interest*.
639. This provision provides transitional arrangements for the amendments inserted into the *Family Law (Superannuation) Regulations 2001* on 18 October 2023. It will effectively deem that where a superannuation agreement or *splitting order* is made on or after 18 October 2023 in relation to an interest in the scheme constituted by the *Parliamentary Contributory Superannuation Act 1948*, the interest is deemed an *unsplittable interest*. It does not affect superannuation agreements or *splitting orders* dealing with these interests that were made before 18 October 2023.
640. A legislative note explains that 18 October 2023 is the date the equivalent provision to subparagraph 14(1)(b)(ii) commenced in the 2001 Regulations.

Schedule 1—Forms

Form 1—Notice to trustee that non-member spouse’s entitlement under agreement or order satisfied

641. Form 1 provides the prescribed form for a *non-member spouse* to notify a *trustee* that their entitlement under a superannuation agreement, or *flag lifting agreement*, or *splitting order*, has been satisfied. This form is prescribed when section 36 of the 2025 Regulations applies.

Form 2—Request to trustee by non-member spouse for payment, as lump sum, of all or part of remaining adjusted base amount

642. Form 2 provides the prescribed form for a *non-member spouse* to request that the *trustee* pay them the whole or part of the remaining amount of the adjusted *base amount* applicable to them, as a lump sum. This form will be prescribed by section 82 of the 2025 Regulations.

Form 3—Request to trustee by non-member spouse for payment, as lump sum, of all or part of adjusted base amount

643. Form 3 provides the prescribed form for a *non-member spouse* to request that the *trustee* pay them the whole or part of the amount of the adjusted *base amount* applicable to them, as a lump sum. This form will be prescribed by section 83 or 84 of the 2025 Regulations.

Form 4—Request to trustee by non-member spouse for payment, as lump sum, of all or part of remaining base amount

644. Form 4 provides the prescribed form for a *non-member spouse* to request that the *trustee* pay them the whole or part of the remaining amount of the *base amount* applicable to them, as a lump sum. This form will be prescribed by section 92 of the 2025 Regulations.

Form 5—Waiver notice in respect of payment split

645. Form 5 provides the prescribed form for a *non-member spouse* to waive their entitlement to a *payment split* under subsection 90XZA(2) or 90YZQ(2) of the Family Law Act. This form will be prescribed by section 99 of the 2025 Regulations.

Form 6—Declaration to accompany application to trustee for information about a superannuation interest

646. Form 6 provides the prescribed declaration to be used by an eligible person requesting information from a *trustee* about an eligible *superannuation interest*, as required under subsection 90XZB(2) or 90YZR(2) of the Family Law Act. This form will be prescribed by section 102 of the 2025 Regulations.

Schedule 2—Value of non-member spouse’s entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase

647. Schedule 2 provides the method for calculating the value of a *non-member spouse’s* entitlement at a particular time for a percentage-only *superannuation interest* in a *superannuation fund* or an *approved deposit fund*, in the *payment phase*. This will be required by section 29 of the 2025 Regulations. The Schedule provides separate methods for determining the value of the *non-member spouse’s* entitlement where no benefit is payable to the member spouse other than a *pension*, and where there is another benefit payable to the member spouse in addition to a *pension*. The value of the entitlement includes the value of any reversionary benefit that might be payable to a surviving spouse of the member at the particular time.

Part 1—Preliminary

648. Part 1 of Schedule 2 provides for the application of the Schedule, and defines the expressions used in the methods contained in this Schedule.

Part 2—Method for subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Act

649. Part 2 of Schedule 2 provides the method for calculating the value of the *non-member spouse's* entitlement for the interest when a percentage is specified under subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Family Law Act. Each of those provisions of the Family Law Act permit parties or the court to specify a percentage that is to apply for the purposes of that provision, as opposed to specifying a percentage that is to apply to each *splittable payment*.

Part 3—Method for subparagraphs 90XJ(1)(b)(ii) and 90YN(1)(b)(ii), and paragraphs 90XT(1)(b) and 90YY(1)(b), of the Act

650. Part 3 of Schedule 2 provides the method for calculating the value of the *non-member spouse's* entitlement for the interest when a percentage is specified under subparagraphs 90XJ(1)(b)(ii) and 90YN(1)(b)(ii), and paragraphs 90XT(1)(b) and 90YY(1)(b), of the Family Law Act. Those provisions of the Family Law Act permit parties or the court to specify a percentage that is to apply directly to each *splittable payment*.

Part 4—Reversion valuation factors

651. Part 4 of Schedule 2 provides the reversion valuation factors that are to apply to the methods set out in Parts 2 and 3 of Schedule 2, if any reversionary benefit is payable in respect of the interest.

Schedule 3—Method for determining gross value of defined benefit interest

652. Schedule 3 provides the method for calculating the gross value of a *superannuation interest*, or a *component* of an interest, that is a *defined benefit interest* that is in the *growth phase*. This will be required by section 52, 60 or 113 of the 2025 Regulations.

Part 1—Preliminary

653. Part 1 of Schedule 3 provides for the application of the Schedule, and directs users to the relevant Part of the Schedule for the method and factors to be used to calculate the gross value of an interest based on particular circumstances.

Part 2—Interest relating to current employment—benefit payable only as lump sum

654. Part 2 of Schedule 3 provides the method for calculating the gross value of a *superannuation interest* held as a result of employment in which the member spouse is still engaged, where the benefit in respect of the interest is payable only as a lump sum. This Part will also provide the lump sum valuation factors to be applied to the method. These factors will be distinguished by a member spouse's remaining years until the *member's retirement age* that applies to their scheme.

Part 3—Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

655. Part 3 of Schedule 3 provides the method for calculating the gross value of a *superannuation interest* held as a result of employment in which the member spouse is still engaged, where the benefit in respect of the interest is payable only as a *pension*, and where the *member spouse's* age is 65 years or less. This Part also provides the *pension* and reversion valuation factors to be applied to the method.

These factors can be distinguished by level of indexation of the *pension*, and length of guarantee period for the *pension*.

Part 4—Interest relating to current employment—benefit payable only as pension, and member spouse’s age is more than 65 years

656. Part 4 of Schedule 3 provides that the methods and factors for calculating the gross value of a *superannuation interest* held as a result of employment in which the member spouse is still engaged, where the benefit in respect of the interest is payable only as a *pension*, and where the *member spouse’s* age is more than 65 years, are those that are set out in Parts 2 and 3 of Schedule 5. The methods and factors in Schedule 5 ordinarily apply for certain *superannuation interests* in the *payment phase* and will be applied for the purpose of Part 4 of Schedule 3 as if the member spouse had retired, and as if the *relevant date* were the first day of the *member spouse’s* retirement.

Part 5—Interest relating to current employment—benefit payable as combination of lump sum and pension

657. Part 5 of Schedule 3 provides the method for calculating the gross value of a *superannuation interest* held as a result of employment in which the member spouse is still engaged, where the benefit in respect of the interest is payable as a lump sum, a *pension*, or a combination of a lump sum and a *pension*. The methods in this Part require the application of the methods set out in Part 3 or 4 of this Schedule, and if Part 4 of this Schedule applies, then a method in Part 2 or 3 of Schedule 5 will also apply.

Part 6—Interest relating to former employment—benefit payable only as lump sum

658. Part 6 of Schedule 3 provides the methods for calculating the gross value of a *superannuation interest* held as a result of employment in which the member spouse is no longer engaged, where the benefit in respect of the interest is payable only as a lump sum. This Part also provides the discount valuation factors to be applied to the methods.

Part 7—Interest relating to former employment—benefit payable only as pension

659. Part 7 of Schedule 3 provides the methods for calculating the gross value of a *superannuation interest* held as a result of employment in which the member spouse is no longer engaged, where the benefit in respect of the interest is payable only as a *pension*. Those methods require the application of the methods set out in Part 3 or 4 of this Schedule, and if Part 4 of this Schedule applies, then a method in Part 2 or 3 of Schedule 5 will also apply. This Part also provide the discount valuation factors to be applied to the methods.

Part 8—Interest relating to former employment—benefit payable as combination of lump sum and pension

660. Part 8 of Schedule 3 provides the methods for calculating the gross value of a *superannuation interest* held as a result of employment in which the member spouse is no longer engaged, where the member may choose for benefits in respect of the interest to be payable as a lump sum, a *pension*, or a combination of a lump sum and a *pension*. The methods in this Part require the application of the methods and factors set out in Parts 6 and 7 of this Schedule.

Schedule 4—Method for determining gross value of partially vested accumulation interest

661. Schedule 4 provides the method for calculating the gross value of a *partially vested accumulation interest* that is in the *growth phase*. This will be required by section 55 or 107 of the 2025 Regulations. This Schedule also provides the vesting factors to be applied to the method.

Schedule 5—Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)

662. Schedule 5 provides the methods to calculate the gross value of a superannuation interest in the *payment phase*, where benefits in respect of the interest are payable as a *pension* for the life of the member spouse, and are not payable due to the *member spouse's* invalidity. This will be required by section 66, 68 or 72 of the 2025 Regulations.

Part 1—Preliminary

663. Part 1 of Schedule 5 provides for the application of the Schedule.

Part 2—Interest has no guarantee period, or guarantee period has already ended

664. Part 2 of Schedule 5 provides the method for calculating the gross value of a superannuation interest in the *payment phase*, where benefits in respect of the interest are payable as a *lifetime pension* otherwise than due to invalidity, and either the *pension* does not have a guarantee period, or the guarantee period for the *pension* has ended. This Part also provides the *pension* and reversion valuation factors to be applied to the method. These factors can be distinguished by the indexation level of the *pension*.

Part 3—Interest has a guarantee period that is yet to end

665. Part 3 of Schedule 5 provides the method for calculating the gross value of a superannuation interest in the *payment phase*, where benefits in respect of the interest are payable as a *lifetime pension* otherwise than due to invalidity, and where the *pension* has a guarantee period that is yet to end.

Division 1—Application and method

666. Division 1 of Part 3 of Schedule 5 provides for the application of the Part, and provides the method to be used. The method will be the sum of the present value of the *pension* during the guarantee period calculated under Division 2 of this Part, and the present value of the *pension* after the end of the guarantee period calculated under Division 3 of this Part.

Division 2—Present value of the pension payable for the remaining part of the guarantee period

667. Division 2 of Part 3 of Schedule 5 provides the method for calculating the present value of the *pension* payable in respect of the superannuation interest for the remaining part of the guarantee period, for the purposes of the method in Division 1 of this Part. The method in this Division requires the application of the method and factors in Schedule 8.

668. The method and factors in Schedule 8 ordinarily apply for *superannuation interests*, the benefits in respect of which are payable as a fixed term *pension* and will be applied for the purpose of Part 3 of Schedule 5 as if a reference to the remaining term of the *pension* is treated as if it were a reference to the remaining part of the guarantee period. For example, if the remaining part of the guarantee period of the *member spouse's pension* is 2 years, then the method and factors in Schedule 8 will be used as if the remaining term of the *pension* is 2 years. This is intended to produce a value for the part of the *pension* that is payable during the guarantee period.

Division 3—Present value of the pension payable after the end of the guarantee period

669. Division 3 of Part 3 of Schedule 5 provides the method for calculating the present value of the *pension* payable in respect of the superannuation interest after the end of the guarantee period, for the purposes of the method in Division 1 of this Part. The method in this Division applies the *pension* and reversion valuation factors contained in Part 2 of this Schedule.
670. The factors in Part 2 ordinarily apply for a superannuation interest, the benefits in respect of which are payable as a *lifetime pension*, either without a guarantee period or where the guarantee period for the *pension* has ended. The factors in Part 2 will be applied as if Part 2 applied to the *pension*, and as if references to the *member spouse's* age are references to the expression 'z'.
671. The expression 'z' is defined in Division 3 (including interpolating, if necessary, on a monthly basis between whole years), and is intended to represent the sum of the *member spouse's* age and the length of the remaining guarantee period of the *pension*. For example, if the *member spouse's* age is 68 years, and the length of the remaining guarantee period for the *pension* is 2 years, then 'z' will be equal to 70. The relevant *pension* and reversion valuation factors are identified by treating 70 as the age of the member spouse for the purposes of Part 2. This is intended to produce a value for the part of the *pension* that is payable after the end of the guarantee period.
672. Division 3 will also provide the discount and survival valuation factors to be applied to the method, recognising that the pension payable at the end of the guarantee period also needs to be calculated at the same relevant date.

Schedule 6—Method for determining value of superannuation interest in lifetime annuity

673. Schedule 6 provides the method for calculating the value at termination time of a superannuation interest that is in a lifetime *superannuation annuity*, if the interest was in the *payment phase* at the termination time. This calculation will be required by section 35, which provides that, where the Minister has not approved a method or factors for determining the gross value of the superannuation interest, the value of the *non-member spouse's* entitlement for the interest at termination time is to be calculated in accordance with this Schedule. The Schedule is relevant to Part 3 which deems payments as not splittable payments in certain circumstances where the trustee has taken certain actions in relation to the non-member spouse's entitlement.
674. The method in this Schedule applies the *pension* valuation factors contained in Part 2 of Schedule 5. Those factors ordinarily apply for a superannuation interest in the *payment phase*, the benefits in respect of which are payable as a *lifetime pension*,

either without a guarantee period or where the guarantee period for the *pension* has ended. The factors in Part 2 of Schedule 5 will be applied as if references to a *pension* were references to an annuity.

Schedule 7—Method for determining gross value of superannuation interest payable as life pension due to invalidity

675. Schedule 7 provides the method for calculating the gross value of a superannuation interest in the *payment phase*, the benefits in respect of which are payable as a *lifetime pension* because of invalidity. This will be required by section 66 or 68 of the 2025 Regulations. Schedule 7 also provides the valuation factors to be applied to the method. These factors can be distinguished by the level of indexation of the *pension*. This Schedule is intended to account for the fact that members who exit the workforce due to invalidity are more likely to experience higher than average rates of mortality.

Schedule 8—Method for determining gross value of superannuation interest payable as fixed-term pension

676. Schedule 8 provides the method for calculating the gross value of a superannuation interest in the *payment phase*, the benefits in respect of which are payable as a *fixed-term pension*. This will be required by section 66 or 68 of the 2025 Regulations. Schedule 8 also provides the valuation factors to be applied to the method. These factors can be distinguished by level of indexation of the *pension*.

Schedule 9—Method for determining value of superannuation interest in fixed term annuity

677. Schedule 9 provides the method for calculating the value at termination time of a superannuation interest that is in a fixed term *superannuation annuity*, if the interest was in the *payment phase* at the termination time. This calculation will be required by section 35, which provides that, where the Minister has not approved a method or factors for determining the gross value of the superannuation interest, the value of the *non-member spouse's* entitlement for the interest at termination time is to be calculated in accordance with this Schedule. The Schedule is relevant to Part 3 which deems payments as not splittable payments in certain circumstances where the trustee has taken certain actions in relation to the *non-member spouse's* entitlement.

678. The method in this Schedule applies the *pension* valuation factors contained in Schedule 8. Those factors ordinarily apply for a superannuation interest in the *payment phase*, the benefits in respect of which are payable as a *fixed-term pension*. The valuation factors in Schedule 8 will be applied as if references to a *pension* were references to an annuity.

Schedule 10—Method for determining gross value of superannuation interest payable as pension and future lump sum

679. Schedule 10 provides the method for calculating the gross value of a *superannuation interest* in the *payment phase*, part of the benefits in respect of which is being paid as a *pension*, while the remaining part of the benefits in respect of the interest is payable, at a future date, as a lump sum that is not a commutation of the *pension*. This is required by section 67 of the 2025 Regulations.

680. This method refers to the gross value of the *pension* as determined in accordance with section 66 of the 2025 Regulations. That section provides for how to calculate the gross value of a *superannuation interest* in the *payment phase*, the benefits in respect of which are being paid as a *pension*.
681. Schedule 10 also provides the lump sum discount valuation factors to be applied to the method.

Schedule 11—Method for determining transition factor for calculating the amount to be paid to the non-member spouse

682. Schedule 11 provides for how to determine the value of the transition factor for use in Division 2 of Part 7. This will be required by section 81, 82, 83, 84 or 85 of the 2025 Regulations.
683. A transition factor will be introduced by the 2025 Regulations to address circumstances where a *superannuation interest* will be valued twice at two different points in time and between these two points, there has been a change in valuation methods or factors (which may occur following an update to the underlying assumptions) that will result in a change in the value of the interest as determined under the 2025 Regulations.
684. In these circumstances, the first valuation will be calculated at the time the agreement or order is made, and the second valuation will be calculated when a *splittable payment* becomes payable. This second calculation could be many years later when the member spouse retires.
685. If there has been a change in valuation methods or factors between the first and second calculation events, the member spouse or the *non-member spouse* could be inadvertently disadvantaged as the second valuation will calculate a different entitlement to the first valuation due to the change in valuation methods or factors.
686. To avoid this unintended consequence, transition factors are applied in the formulae under Part 7 to reduce any impact on a *non-member spouse's* entitlement that would otherwise be caused by a change in methods or factors. It is expected that the value of a members' interest will change over time due to a number of reasons. However, the transition factors are not intended to address changes in value caused by any other reason other than the change in methods and factors.
687. The transition factors were developed by the Australian Government Actuary for circumstances where an interest was in *growth phase* when the superannuation agreement was served on the *trustee*, or at the date of the *splitting order*. Where the agreement was served when the interest was in the *payment phase*, or where the *splitting order* is dated when the interest was in the *payment phase*, the Australian Government Actuary has advised that transition factors are not appropriate, due to the wide variance across the factors that apply at each post-retirement age and the relatively unlikely event that the two calculation dates (both in the payment phase) straddle a change in valuation methods or factors. This includes a *payment phase superannuation interest*, the benefits in respect of which are payable as a *lifetime pension*, a fixed term *pension*, or a *pension* payable upon the member's invalidity.

Clause 1—Application of this Schedule

688. Clause 1 of Schedule 11 provides that Schedule 11 contains the method for calculating the transition factor for use in Division 2 of Part 7, to determine the amount a *non-member spouse* is entitled to be paid in relation to a *superannuation interest* under a superannuation agreement, *flag lifting agreement* or *splitting order*, and that is in the *growth phase* at the date the agreement is served on the *trustee*, or at the date of the *splitting order*.
689. A legislative note under clause 1 clarifies that Schedule 11 only applies for determining the transition factor if the Minister has not approved a method or factors for determining the gross value of the interest under section 62 or 70 of the 2025 Regulations, and if one or more benefits in respect of the *superannuation interest* are payable as a *pension* for the life of the member spouse, but not due to the *member spouse's* invalidity. If the Minister has approved a method or factors for determining the gross value of the interest under section 62 or 70, the transition factor approved under section 79 will apply. The note also directs the reader, as an example, to the definition of ***transition factor*** in subsection 81(3). This same definition is set out in several provisions within Division 2 of Part 7.

Clause 2—Transition factor

690. This clause provides for how to determine the value of the transition factor for a *superannuation interest*.
691. Subclause 2(1) provides that the transition factor is equal to the relative value factor for the interest at the date the first *splittable payment* became payable, divided by the relative value factor for the interest at the *operative time*. This subclause also defines:
- ***Relative factor for the interest at the date the first splittable payment became payable*** to mean the factor mentioned in the relevant clause in this Schedule that applies for the interest and the member spouse at the date of the first *splittable payment*.
 - ***Relative value factor for the interest at the operative time*** to mean the factor mentioned in the relevant clause in this Schedule that applies for the interest and the member spouse at the *operative time*.
692. Subclause 2(2) provides that the transition factor is 1 if none of clauses 3 to 5 of this Schedule apply for the interest. Clauses 3 to 5 set out the transition factors for a *superannuation interest*, the benefits of which are payable as a *pension* with no guarantee period, a guarantee period of 5 years, or a guarantee period of 10 years, respectively. These align with the guarantee periods set out in Part 3 of Schedule 3, which contain the factors to be used to calculate the value of a *superannuation interest*, the benefits of which are payable as a *lifetime pension*.
693. The prescription of a transition factor of 1 where clauses 3 to 5 do not apply is intended to ensure that the methods in Division 2 of Part 7 continue to function, even for a *superannuation interest*, the benefits of which are payable as a *pension* with a guarantee period that, at the commencement of *pension* payments, is a period other than 5 or 10 years.

Clause 3—Relative value factors—benefits in respect of the superannuation interest are payable as a pension that has no guarantee period

694. Clause 3 provides the relative value factors for a *superannuation interest*, the benefits in respect of which are payable as a *pension* that has no guarantee period. The relative value factors are distinguished by male, female, level of indexation of the *pension*, and applicable date. The transition factor will then be determined by reference to the relative value factor at the date of the first *splittable payment*, and relative value factor at the *operative time*.

Clause 4—Relative value factors—benefits in respect of the superannuation interest are payable as a pension having a 5-year guarantee period

695. Clause 4 provides the relative value factors for a *superannuation interest*, the benefits in respect of which are payable as a *pension* that has a guarantee period of 5 years. The relative value factors are distinguished by male, female, level of indexation of the *pension*, and applicable date. The transition factor will then be determined by reference to the relative value factor at the date of the first *splittable payment*, and relative value factor at the *operative time*.

Clause 5—Relative value factors—benefits in respect of the superannuation interest are payable as a pension having a 10-year guarantee period

696. Clause 5 provides the relative value factors for a *superannuation interest*, the benefits in respect of which are payable as a *pension* that has a guarantee period of 10 years. The relative value factors are distinguished by male, female, level of indexation of the *pension*, and applicable date. The transition factor will then be determined by reference to the relative value factor at the date of the first *splittable payment*, and relative value factor at the *operative time*.

697. An example of how to determine a transition factor are as follows:

- Suppose a male member spouse holds a *superannuation interest*, the first *splittable payment* in respect of which was a lump sum that the member spouse did not choose, as described in section 81 of the 2025 Regulations, followed by benefits payable as a life *pension* indexed at 5%, with a guarantee period of 5 years.
- Suppose a *splitting order* allocating a *base amount* to the *non-member spouse* was made in relation to the order on 1 July 2018.
- Suppose the member spouse becomes entitled to the first *splittable payment* (the lump sum) on 1 July 2028.
- The transition factor for the interest, determined in accordance with the method at subclause 2(1), using the relative value factors set out at clause 4, is as follows:
- $1.26 / 1 = 1.26$.
- The transition factor for the interest is equal to 1.26.

Schedule 12—Modifications of Division 2 of Part 7

698. Schedule 12 provides modifications to Division 2 of Part 7 as provided by section 78 of the 2025 Regulations. This Schedule applies when there is a second or later

payment split for the *superannuation interest* under a superannuation agreement or *flag lifting agreement*, or *splitting order*, where the *superannuation interest* is in the *growth phase* at the date the agreement is served on the *trustee*, or at the date of the *splitting order*, and operates to modify Division 2 of Part 7 to provide for the calculation of the *non-member spouse's* entitlement under the second or later *payment split*.

699. Division 2 of Part 7 provides for the calculation of the *non-member spouse's* entitlement from each *splittable payment* under a superannuation agreement or *flag lifting agreement*, or *splitting order*, where the *superannuation interest* is in the *growth phase* at the date the agreement is served on the *trustee*, or at the date of the *splitting order*.
700. This Schedule, in line with sections 90XX and 90YZN of the Family Law Act, is intended to provide for calculation of the entitlement of each *non-member spouse* in the order of the *operative time* for the agreement or order relating to that *non-member spouse*, starting with the earliest time, with the effect that the amount of each *splittable payment*, other than the one with the earliest *operative time*, is to be reduced by the amount that the *non-member spouse* is entitled to under the *payment split* with the next earlier *operative time*.

Clause 1—Paragraph 80(1)(c)

701. Section 80 of the 2025 Regulations provides for the calculation of the *non-member spouse's* entitlement when the first *splittable payment* the member spouse is entitled to receive in respect of the *superannuation interest* is a lump sum that is not one that the member spouse may choose to receive, that is greater than or equal to the *adjusted base amount applicable to the non-member spouse*.
702. Clause 1 omits and substitutes paragraph 80(1)(c) which operates to provide that section 80 applies if the lump sum is greater than or equal to the sum of each *adjusted base amount applicable to the non-member spouse* and to each other person with a *payment split* at an earlier *operative time*.
703. In this clause, 'each other person' refers to any other person who will be entitled to an amount under another payment split with an earlier *operative time*. Such a person who is ordinarily a *non-member spouse* for the purposes of the earlier *payment split*, as distinct from the *non-member spouse* for the *payment split* being dealt with by this Schedule. This captures any *payment splits* with an earlier *operative time* for that *superannuation interest*. This contemplates that a member spouse may have multiple family law separations with different *non-member spouses* over time.

Clause 2—Paragraph 81(1)(c)

704. Section 81 of the 2025 Regulations provides for the calculation of the *non-member spouse's* entitlement when the first *splittable payment* the member spouse is entitled to receive in respect of the *superannuation interest* is a lump sum that is not one that the member spouse may choose to receive, that is less than the *adjusted base amount applicable to the non-member spouse*.
705. Clause 2 omits and substitute paragraph 81(1)(c) which operates to provide that section 81 applies if the lump sum is less than the sum of each *adjusted base amount applicable to the non-member spouse* and to each other person with a *payment split* at an earlier *operative time*.

706. In this clause, ‘each other person’ refers to any other person who is entitled to an amount under another *payment split* with an earlier *operative time*. Such a person ordinarily is a *non-member spouse* for the purposes of the earlier *payment split*, as distinct from the *non-member spouse* for the *payment split* being dealt with by this Schedule. This captures any *payment splits* with an earlier *operative time* for that *superannuation interest*. This contemplates that a member spouse may have multiple family law separations with different *non-member spouses* over time.

Clause 3—Paragraph 81(2)(a)

707. Subsection 81(2) of the 2025 Regulations provides for the calculation of the *non-member spouse’s* entitlement from each other *splittable payment*, where the circumstances in subsection 81(1) apply to a *superannuation interest*; that is, when the first *splittable payment* the member spouse is entitled to receive in respect of the *superannuation interest* is a lump sum that is not one that the member spouse may choose to receive, that is less than the *adjusted base amount applicable to the non-member spouse*.
708. When modified by this Schedule, subsection 81(1) applies when the lump sum is less than the sum of each *adjusted base amount applicable to the non-member spouse* and to each other person with a *payment split* at an earlier *operative time*.
709. Paragraph 81(2)(a) provides that for a *superannuation interest* with circumstances outlined in subsection 81(1), the amount the *non-member spouse* is entitled to be paid in respect of the *superannuation interest* is the amount of the lump sum and the amount calculated under subsection 81(3) from each other *splittable payment*, unless section 82 applies.
710. Clause 3 omits and substitutes paragraph 81(2)(a) which operates to provide that the amount the *non-member spouse* is entitled to be paid in respect of the *superannuation interest* is the amount remaining from the lump sum after each other person has received the amount they are entitled to under a *payment split* with an earlier *operative time*, and the amount calculated under subsection 81(3) from each other *splittable payment*, unless section 82 applies.
711. In this clause, ‘each other person’ refers to any other person who is entitled to an amount under another *payment split* with an earlier *operative time*. Such a person ordinarily is a *non-member spouse* for the purposes of the earlier *payment split*, as distinct from the *non-member spouse* for the *payment split* being dealt with by this Schedule. This captures any *payment splits* with an earlier *operative time* for that *superannuation interest*. This contemplates that a member spouse may have multiple family law separations with different *non-member spouses* over time.

Clause 4—Subsection 82(6) (definition of *remaining value of the superannuation interest*)

712. Section 82 of the 2025 Regulations provides for the calculation of the *non-member spouse’s* entitlement when the *non-member spouse* is entitled to receive the amount of the lump sum under paragraph 81(2)(a), which is when:
- the *non-member spouse* is entitled to be paid the amount of the lump sum under paragraph 81(2)(a) (this is an initial lump sum the member spouse does not have a choice in taking)

- the member spouse or other person may choose to take all or some of the remaining benefits as a lump sum, whether that be by way of commutation of a *pension* or otherwise (this is a further optional lump sum the member spouse may choose to take)
 - the *non-member spouse* has served a request on the *trustee* using Form 2 in Schedule 1 of the 2025 Regulations, to be paid as a lump sum, a portion or all of the remaining adjusted *base amount* for the interest when the *splittable payment* becomes payable, and
 - by making the choice to be paid the amount requested by the *non-member spouse*, the member spouse or other person will not lose their right to take the remaining part of their benefit as a *pension*.
713. When modified by this Schedule, paragraph 81(2)(a) provides that the amount the *non-member spouse* is entitled to be paid in respect of the *superannuation interest* is the amount remaining from the lump sum after each other person has received the amount they are entitled to under a *payment split* with an earlier *operative time*, and the amount calculated under subsection 81(3) from each other *splittable payment*, unless section 82 applies.
714. Subsection 82(4) provides that the member spouse must take at least the amount of the *minimal lump sum* to be calculated in accordance with subsection 82(5) as a lump sum, and that the *non-member spouse* is entitled to be paid at least the amount of that minimal lump sum.
715. Paragraph 82(4)(c) provides that the *non-member spouse* is also entitled to be paid an amount in accordance with subsection 82(6) from any excess of the minimal lump sum that the member chooses to be paid as a lump sum, and from each other *splittable payment* that becomes payable to the member spouse in respect of the interest.
716. Subsection 82(6) provides a formula to calculate the amount which the *non-member spouse* is entitled to be paid under paragraph 82(4)(c). That formula defines ***remaining value of the superannuation interest*** as the remaining value of the interest after the payment of the lump sums to the *non-member spouse* under paragraphs 81(2)(a) and 82(4)(c), calculated under subsection 82(7).
717. Clause 4 omits and substitutes this definition, which provides that the remaining value of the interest means the remaining value of the superannuation interest after the payment of the lump sums, under paragraphs 81(2)(a) and 82(4)(c), to each other person under a *payment split* with an earlier *operative time*, and to the *non-member spouse*, calculated in accordance with subsection 82(7).
718. In this clause, ‘each other person’ refers to any other person who is entitled to an amount under another *payment split* with an earlier *operative time*. Such a person is ordinarily a *non-member spouse* for the purposes of the earlier *payment split*, as distinct from the *non-member spouse* for the *payment split* being dealt with by this Schedule. This captures any *payment splits* with an earlier *operative time* for that *superannuation interest*. This contemplates that a member spouse may have multiple family law separations with different *non-member spouses* over time.

Clause 5—Subsection 82(7)

719. Subsection 82(7) of the 2025 Regulations provides a formula to calculate the *remaining value of the superannuation interest*, as it defined under subsection 82(6).
720. Subsection 82(6) provides a formula to calculate the amount which the *non-member spouse* is entitled to be paid under paragraph 82(4)(c). That formula defines the remaining value of the superannuation interest as the remaining value of the interest after the payment of the lump sums to the *non-member spouse* under paragraphs 81(2)(a) and 82(4)(c), calculated under subsection 82(7).
721. When modified by this Schedule, subsection 82(6) provides that the remaining value of the interest means the remaining value of the superannuation interest after the payment of the lump sums, under paragraphs 81(2)(a) and 82(4)(c), to each other person under a *payment split* with an earlier *operative time*, and to the *non-member spouse*, calculated in accordance with subsection 82(7).
722. Subsection 82(7) provides that the remaining value of the *superannuation interest* after the payment of the lump sums to the *non-member spouse* under paragraphs 81(2)(a) and 82(4)(c) is to be calculated in accordance with a formula. That formula includes the following defined terms (among others):
- ***Deemed value of the interest were it in payment phase at adjusted date*** means the amount that will be calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable for the interest.
 - ***Initial lump sum*** means the mandatory initial lump sum amount paid to the *non-member spouse* under paragraph 81(2)(a).
 - ***Other lump sum*** means the optional lump sum amount paid to the *non-member spouse* under paragraph 82(4)(b).
723. Clause 5 omits subsection 82(7), including the note, and substitutes a new subsection 82(7). The substituted subsection provides that the remaining value of the *superannuation interest* after the payment of the lump sums to each other person under a *payment split* with an earlier *operative time*, and to the *non-member spouse*, under paragraphs 81(2)(a) and 82(4)(c) is equal to the sum of an amount calculated by a formula for each of the ***eligible recipients***. The substituted subsection defines each other person under a *payment split* with an earlier *operative time*, and the *non-member spouse*, as eligible recipients.
724. The substituted subsection also modifies the definitions of certain expressions to ensure that *payment splits* with an earlier *operative time* are accounted for. The defined terms that are modified in the substituted formula are:
- ***Deemed value of the interest were it in the payment phase at the adjusted date*** means the amount that is calculated under section 64 of the 2025 Regulations if the references in Division 2 of Part 6 of the 2025 Regulations to *relevant date* were references to the date the first *splittable payment* is payable to the eligible recipient of the payment.

- ***Initial lump sum*** means the amount of the lump sum paid to the eligible recipient under paragraph 81(2)(a) of the 2025 Regulations.
- ***Other lump sum*** means the amount of the lump sum paid to the eligible recipient under paragraph 82(4)(b) of the 2025 Regulations.

725. A legislative note under the new definitions signposts to readers that the terms ***commutation factor*** and ***pension value factor*** are defined in section 72 of the 2025 Regulations.

Comparison table of provisions – 2001 Regulations and 2025 Regulations

This is a table providing a comparison of the provision numbers between the 2001 Regulations and the 2025 Regulations. As the order of some provisions has changed, the provision numbers in the table are not always consecutive. Furthermore, not every provision, subdivision or division in the 2001 Regulations has a corresponding provision, subdivision or division in the 2025 Regulations, as indicated in the table.

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|---|--|
| Part 1 – Preliminary | Part 1 - Preliminary |
| 1 | 1 |
| (No corresponding provision) | 2 |
| (No corresponding provision) | 3 |
| 3 (and 45) | 4 |
| 4 | N/A |
| (No corresponding provision) | 5 |
| 5 | 6 |
| 6 | 7 |
| 7 | 8 |
| 8 | 9 |
| 9 | 10 |
| 9A | 11 |
| 9B | (No corresponding provision) |
| 10 | 12 |
| 10A | 13 |
| 11 | 14 |
| 11A | 15 |
| Part 2 – Payments that are not splittable payments | Part 2 - Payments that are not splittable payments: payments of a particular character, or payments after death of member spouse |
| Division 2.1 – General | (No corresponding division) |
| 12 | 16 |
| 13 | 17 |
| Division 2.2—Particular circumstances in which payments are not splittable payments | Part 3 – Payments that are not splittable payments: payments made in particular circumstances |
| (No corresponding division) | Division 2—Circumstances when payments are not splittable payments |
| 14 | 20 |
| (No corresponding division) | Division 1 – Preliminary |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|---|--|
| (No corresponding provision) | 18 |
| 14A | 19 |
| (No corresponding division) | Division 3 – When the payment relates to a superannuation interest that is not a percentage-only interest |
| (No corresponding subdivision) | Subdivision A—New interest created, or amount transferred or rolled over or paid, under SIS Regulations or RSA Regulations, in satisfaction of the non-member spouse’s entitlement |
| 14F | 21 |
| (No corresponding subdivision) | Subdivision B—New interest otherwise created, or amount otherwise transferred or rolled over or paid, by trustee, or separate entitlement arising, in satisfaction of non-member spouse’s entitlement under agreement or order |
| 14G(1) | 22(1) |
| 14G(3) to (6), and 14G(12) | 23 |
| 14G(6A) and (7A) | 24 |
| 14G(7) | 22(2) |
| 14G(8) to (11) | 25 |
| (No corresponding division) | Division 4—When the payment relates to a superannuation interest that is a percentage only interest |
| (No corresponding subdivision) | Subdivision A—New interest created, or amount transferred or rolled over or paid, by trustee, or separate entitlement arising, in satisfaction of non-member spouse’s entitlement under agreement or order |
| 14N(1) and (2) | (No corresponding provision) |
| 14N(6) | 26(2) |
| 14N(3) to (5), and 14N(8) | 27 |
| 14N(5A) and (6A) | 28 |
| 14N(7) | 29 |
| 14N(8) | (No corresponding provision) |
| (No corresponding subdivision) | Subdivision B—New deferred annuity established, or amount transferred or rolled over or paid, by trustee of deferred annuity in satisfaction of non-member spouse’s entitlement under agreement or order |
| 14P(1) | 30 |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|---|--|
| 14P(2) | (No corresponding provision) |
| 14P(3) to (8), and 14P(10) | 31 |
| 14P(9) | 32 |
| (No corresponding subdivision) | Subdivision C—New annuity established or amount transferred or rolled over or paid by trustee of a superannuation annuity (other than under Subdivision B) in satisfaction of non-member spouse’s entitlement under agreement or order |
| 14Q(1) | 33 |
| 14Q(2) | (No corresponding provision) |
| 14Q(3) to (6), and 14Q(8) | 34 |
| 14Q(7) | 35 |
| (No corresponding division) | Division 5—When the payment by the member spouse is in satisfaction of the non-member spouse’s entitlement under agreement or order |
| 14H | 36 |
| Part 3 - Payment splitting or flagging by agreement | Part 4—Payment splitting or flagging by agreement |
| Division 3.1—Superannuation interest that is not a percentage-only interest | Division 1—Superannuation interest that is not a percentage only interest |
| 15 | 37 |
| 16 | 38 |
| 17 | 39 |
| Division 3.2—Superannuation interest that is a percentage only interest | Division 2—Superannuation interest that is a percentage-only interest |
| 18 | 40 |
| 19 | 41 |
| 19A | 42 |
| Division 3.3—Miscellaneous | (No corresponding division) |
| 20 | (No corresponding provision) |
| Part 4—Payment splitting or flagging by court order | Part 5—Payment splitting or flagging by court order |
| (No division that exactly corresponds) | Division 1—Simplified outline |
| Division 4.1—Superannuation interest that is not a percentage only interest | (See Part 5, Division 2 below) |
| 21 | (No corresponding provision) |
| (No corresponding provision) | 43 |
| (See Division 4.1 above) | Division 2—Superannuation interest that is not a percentage only interest |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|--|---|
| (No corresponding subdivision) | Subdivision A—Determining the value of the superannuation interest of the member spouse |
| 22 | 44 |
| 24 | 45 |
| (No corresponding subdivision) | Subdivision B—Calculating the amount the non-member spouse is entitled to be paid in respect of certain superannuation interests of the member spouse |
| 23 | 46 |
| Division 4.2—Superannuation interest that is a percentage only interest | Division 3—Superannuation interest that is a percentage only interest |
| 25 | 47 |
| 26 | 48 |
| 26A | 49 |
| Part 5—Determination of amount in relation to certain superannuation interests | Part 6—Determining the value of certain superannuation interests of member spouses |
| Division 5.1—Superannuation interest in growth phase at relevant date | Division 1—Determining the value of superannuation interests in the growth phase at the relevant date |
| 27 | 50 |
| 28 | 51 |
| 29 | 52(1) to (4) |
| 30 | 52(5) |
| 31 | 53 |
| (No corresponding provision) | 54 |
| 32 | 55 |
| 33 | 56 |
| 35 | 57 |
| 36 | 58 |
| 37 | 59 |
| (No corresponding provision) | 60 |
| (No corresponding provision) | 61 |
| 38 | 62 |
| Division 5.2—Superannuation interest in payment phase at relevant date | Division 2—Determining the value of superannuation interests in the payment phase at the relevant date |
| 39 | 63 |
| 40 | 64 |
| 41 | 65 |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|---|--|
| 42 | 66 |
| 43 | 67 |
| (No corresponding provision) | 68 |
| (No corresponding provision) | 69 |
| 43A | 70 |
| Part 6—Entitlement of non-member spouse in respect of certain superannuation interests | Part 7—Entitlement of non-member spouse in respect of certain superannuation interests |
| (No corresponding division) | Division 1—Preliminary |
| (No corresponding subdivision) | Subdivision A—Simplified outline of this Part |
| (No corresponding provision) | 71 |
| Division 6.1—Interpretation | Subdivision B—Interpretation |
| 44 | 72 |
| Division 6.1A—Adjustment of base amount | Subdivision C—Adjustments to the base amount for superannuation interests in the growth phase |
| 45 | 4 |
| 45A | 73 |
| 45B | 75 |
| 45C | 74 |
| 45D | 76 |
| Division 6.2—Superannuation interest in growth phase at date of service of agreement or date of order | Division 2—Superannuation interest in growth phase at date of service of agreement or date of order |
| (No corresponding subdivision) | Subdivision A—Preliminary |
| (No corresponding provision) | 77 |
| 46 | 78 |
| (No corresponding provision) | 79 |
| (No corresponding subdivision) | Subdivision B – First splittable payment that the member spouse or other person is entitled to receive is a lump sum |
| 49 | 80 |
| 50 | 81 |
| 51 | 82 |
| (No corresponding subdivision) | Subdivision C – Optional lump sum relating to the whole or part of the adjusted base amount |
| 52 | 83 |
| 53 | 84 |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|--|--|
| (No corresponding subdivision) | Subdivision D – No benefit payable only as a lump sum, or first splittable payment is not a lump sum |
| 54 | 85 |
| 54A | 86 |
| Division 6.3—Superannuation interest in payment phase at date of service of agreement or date of order | Division 3—Superannuation interest in payment phase at date of service of agreement or date of order |
| (No corresponding subdivision) | Subdivision A—Preliminary |
| Subdivision 6.3.1—Application of Division 6.3 | (No corresponding subdivision) |
| (No corresponding provision) | 87 |
| 55 | 88 |
| Subdivision 6.3.2—First or only payment split | Subdivision B—First or only payment split |
| 55A | 89 |
| 56 | 90 |
| 57 | 91 |
| 58 | 92 |
| 58A | 93 |
| Subdivision 6.3.3—Second or later payment split | Subdivision C – Second or later payment split |
| 58B | 94 |
| 58C | 95 |
| 58D | 96 |
| 58E | 97 |
| Part 7—General provisions about payment splitting | (No corresponding part) |
| Division 7.1—General | Part 8 – Fees payable to trustee and waiver of rights |
| 59 | 98 |
| 60 | 99 |
| Division 7.2—Provision of information to and by trustee | Part 9 – Provision of information to and by trustee |
| (No corresponding division) | Division 1 - Preliminary |
| (No corresponding provision) | 100 |
| 61 | 101 |
| (No corresponding division) | Division 2 – Declaration accompanying application for information about a superannuation interest |
| 62 | 102 |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|---|---|
| (No corresponding division) | Division 3 - Information provided by trustee about superannuation interests |
| (No corresponding subdivision) | Subdivision A – Information about certain accumulation interests |
| 63(1), 63(7) and 63(8) | 103 |
| 63(2) | 104 |
| 63(3) | 105 |
| 63(4) | 106 |
| 63(4A) and 63A | 107 |
| 63(5) | 108 |
| 63(6)-(6B) | 109 |
| (No corresponding subdivision) | Subdivision B – Information about certain defined benefit interests |
| 64(1) and 64A(1) | 110 |
| 64(2) | 111 |
| 64(3), 64A(3), (5) and (7) | 112 |
| 64(4), 64A(4) to (7) | 113 |
| 64(4A) | 114 |
| 64(5) | 115 |
| 64(6)-(7B) | 116 |
| 65 | 117 |
| (No corresponding subdivision) | Subdivision C – Information about certain percentage-only interests |
| 66(1) | 118 |
| 66(2) | 119 |
| 66(3) | 120 |
| 66(3A) | 121 |
| 66(4) | 122 |
| 66(4A) | 123 |
| 66(5) | 124 |
| 66(6) | 125 |
| (No corresponding subdivision) | Subdivision D – Information about certain innovative superannuation interests |
| (No corresponding provision) | 126 |
| (No corresponding provision) | 127 |
| (No corresponding provision) | 128 |
| (No corresponding provision) | 129 |
| (No corresponding provision) | 130 |
| (No corresponding provision) | 131 |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|--|---|
| (No corresponding subdivision) | Subdivision E – Information about interests in self managed superannuation funds |
| 67(1) | 132 |
| 67(2) | 133 |
| 67(3) | 134 |
| 67(4) | 135 |
| 67(5) | 136 |
| (No corresponding subdivision) | Subdivision F – Information about small superannuation accounts interests |
| 68 | 137 |
| (No corresponding subdivision) | Subdivision G – Information about certain interests for which an agreement or splitting order applies |
| 68A(1)-(3) | 138 |
| 68A(4) | 139 |
| (No corresponding subdivision) | Subdivision H – How and when trustee must provide information |
| 68B | 140 |
| (No corresponding subdivision) | Subdivision I – Certain secondary government trustees not required to provide information |
| 69 | 141 |
| (No corresponding subdivision) | Subdivision J – Information provided by trustee to non-member spouse |
| 70 | 142 |
| 71 | 143 |
| 72 | 144 |
| Part 8—Application, saving and transitional provisions | Part 10 – Transitional arrangements |
| (No corresponding division) | Division 1 – Transitional arrangements for the commencement of this instrument |
| 73 | (No corresponding provision) |
| 74 | (No corresponding provision) |
| (No corresponding provision) | 145 |
| 75 | 146 |
| SCHEDULES | |
| Schedule 1 – Forms | Schedule 1 – Forms |
| Schedule 1A – Value of non-member spouse’s entitlement for percentage only interest in superannuation fund or approved deposit fund in payment phase | Schedule 2 – Value of non-member spouse’s entitlement for percentage only interest in superannuation fund or approved deposit fund in payment phase |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|---|---|
| Part 1 – Preliminary | Part 1 – Preliminary |
| Part 2 – Method for subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Act | Part 2 – Method for subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Act |
| Part 3 – Method for subparagraphs 90XJ(1)(b)(ii) and 90YN(1)(b)(ii), and paragraphs 90XT(1)(b) and 90YY(1)(b), of the Act | Part 3 – Method for subparagraphs 90XJ(1)(b)(ii) and 90YN(1)(b)(ii), and paragraphs 90XT(1)(b) and 90YY(1)(b), of the Act |
| Part 4 – Reversion valuation factors | Part 4 – Reversion valuation factors |
| Schedule 2 – Method for determining gross value of defined benefit interest | Schedule 3 – Method for determining gross value of defined benefit interest |
| Part 1 – Preliminary | Part 1 – Preliminary |
| Part 2 – Interest relating to current employment – benefit payable only as lump sum | Part 2 – Interest relating to current employment – benefit payable only as lump sum |
| Part 3 – Interest relating to current employment – benefit payable only as pension | (No corresponding part) |
| (No corresponding part) | Part 3 – Interest relating to current employment – benefit payable only as pension, and member spouse’s age is 65 years or less |
| (No corresponding part) | Part 4 – Interest relating to current employment – benefit payable only as pension, and member spouse’s age is more than 65 years |
| Part 4 – Interest relating to current employment – benefit payable as combination of lump sum and pension | Part 5 – Interest relating to current employment – benefit payable as combination of lump sum and pension |
| Part 5 – Interest relating to former employment – benefit payable only as lump sum | Part 6 – Interest relating to former employment – benefit payable only as lump sum |
| Part 6 – Interest relating to former employment – benefit payable only as pension | Part 7 – Interest relating to former employment – benefit payable only as pension |
| Part 7 – Interest relating to former employment – benefit payable as combination of lump sum and pension | Part 8 – Interest relating to former employment – benefit payable as combination of lump sum and pension |
| Schedule 3 – Method for determining gross value of partially vested accumulation interest | Schedule 4 – Method for determining gross value of partially vested accumulation interest |

| Provision number 2001 Regulations (where applicable) | Provision number in 2025 Regulations (where applicable) |
|---|---|
| Schedule 4 – Method for determining gross value of superannuation interest payable as life pension | Schedule 5 – Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity) |
| (No corresponding part) | Part 1 – Preliminary |
| (No corresponding part) | Part 2 – Interest has no guarantee period, or guarantee period has already ended |
| (No corresponding part) | Part 3 – Interest has a guarantee period that is yet to end |
| (No corresponding division) | Division 1 – Application and method |
| (No corresponding division) | Division 2 – Present value of the pension payable for the remaining part of the guarantee period |
| (No corresponding division) | Division 3 – Present value of the pension payable after the end of the guarantee period |
| Schedule 4A – Method for determining value of superannuation interest in lifetime annuity | Schedule 6 – Method for determining value of superannuation interest in lifetime annuity |
| (No corresponding schedule) | Schedule 7 – Method for determining gross value of superannuation interest payable as life pension due to invalidity |
| Schedule 5 – Method for determining gross value of superannuation interest payable as fixed term pension | Schedule 8 – Method for determining gross value of superannuation interest payable as fixed term pension |
| Schedule 5A – Method for determining value of superannuation interest in fixed term annuity | Schedule 9 – Method for determining value of superannuation interest in fixed term annuity |
| Schedule 6 – Method for determining gross value of superannuation interest payable as pension and future lump sum | Schedule 10 – Method for determining gross value of superannuation interest payable as pension and future lump sum |
| (No corresponding schedule) | Schedule 11 – Method for determining transition factor for calculating the amount to be paid to the non-member spouse |
| Schedule 7 – Modifications of Division 6.2 | Schedule 12 – Modifications of Division 2 of Part 7 |