

2004B00415



Family Law (Superannuation) Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. 2²

352

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Family Law Act 1975*.

Dated 16 DEC 2004 2004

PM Jeffery
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Attorney-General

1 Name of Regulations

These Regulations are the *Family Law (Superannuation) Amendment Regulations 2004 (No. 2)*.

2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

3 Amendment of *Family Law (Superannuation) Regulations 2001*

Schedule 1 amends the *Family Law (Superannuation) Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 3, after definition of *percentage-only interest*

insert

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

[2] Regulation 14G, heading

substitute

14G New interest created or amount transferred or rolled over or paid by trustee (other than under regulation 14F), or separate entitlement arising, in satisfaction of non-member spouse's entitlement under agreement or order

[3] Subregulation 14G (2)

omit

subregulation (3), (4), (5), (5A) or (6) are satisfied.

insert

subregulation (3), (4), (5), (5A), (6) or (6A) are satisfied.

[4] After subregulation 14G (6)

insert

(6A) Subject to subregulation (7A), the requirements of this subregulation are satisfied if:

- (a) the interest is in a public sector superannuation scheme (the *original scheme*); and
- (b) at or after the operative time in relation to the agreement or order, and under the governing rules of the original scheme or under the governing rules of another public sector superannuation scheme, a separate entitlement to benefits has arisen for the non-member spouse in respect of the non-member spouse's entitlement under the agreement or order, being a separate entitlement with a value of at least the value of the non-member spouse's entitlement in respect of the superannuation interest at the time the separate entitlement arose.

[5] After subregulation 14G (7)

insert

(7A) Subregulation (6A) does not apply if:

- (a) the superannuation interest is a defined benefit interest; and
- (b) the governing rules of the original scheme provide for the reduction of the benefit payable to any other member of the scheme (other than the member spouse or a reversionary beneficiary of the member spouse) as a result of the non-member spouse's separate entitlement.

[6] Subregulation 14G (8)*omit*

when the trustee carries out an action described in any of subregulations (3) to (6)

insert

when the trustee carries out an action described in any of subregulations (3) to (6), or a separate entitlement arises for the non-member spouse as described in subregulation (6A),

[7] Paragraphs 14G (9) (a) and (b)*substitute*

- (a) the termination time occurs before the first payment that, except for the operation of this regulation, would be a splittable payment becomes payable in respect of the superannuation interest; or
- (b) paragraph (a) does not apply and one or more payments that, except for the operation of this regulation, would be splittable payments become payable in respect of the superannuation interest after the termination time, and the amount of the first such payment would be more than:
 - (i) if an adjusted base amount is applicable to the non-member spouse at the termination time — the sum of the adjusted base amount and the amount of any fees payable by the non-member spouse under regulation 59; or
 - (ii) in any other case — the sum of the base amount applicable to the non-member spouse at the termination time and the amount of any fees payable by the non-member spouse under regulation 59;

[8] Subregulation 14G (10), formula*omit*

$$SP(\text{prop}) \times V$$

insert

$$(SP(\text{prop}) \times V) - F$$

-
- [9] Subregulation 14G (10), definition of V, paragraph (a)**
omit
the value of the interest under paragraph 90MT (2) (b) of the Act, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse under regulation 59; and
insert
the value of the interest under paragraph 90MT (2) (b) of the Act; and
- [10] Subregulation 14G (10), after definition of V**
insert
F is the amount of any fees payable by the non-member spouse under regulation 59.
- [11] Regulation 14N, heading**
substitute
- 14N 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**
- [12] Subregulation 14N (2)**
omit
subregulation (3), (4), (4A) or (5) are satisfied.
insert
subregulation (3), (4), (4A), (5) or (5A) are satisfied.

[13] After subregulation 14N (5)

insert

- (5A) Subject to subregulation (6A), the requirements of this subregulation are satisfied if:
- (a) the interest is in a public sector superannuation scheme (the *original scheme*); and
 - (b) at or after the operative time in relation to the agreement or order, and under the governing rules of the original scheme or under the governing rules of another public sector superannuation scheme, a separate entitlement to benefits has arisen for the non-member spouse in respect of the non-member spouse's entitlement under the agreement or order, being a separate entitlement with a value of at least the value of the non-member spouse's entitlement in respect of the superannuation interest at the time the separate entitlement arose; and
 - (c) the interest was in the payment phase at the time the separate entitlement arose.

[14] After subregulation 14N (6)

insert

- (6A) Subregulation (5A) does not apply if:
- (a) the superannuation interest is a defined benefit interest; and
 - (b) the governing rules of the original scheme provide for the reduction of the benefit payable to any other member of the scheme (other than the member spouse or a reversionary beneficiary of the member spouse) as a result of the non-member spouse's separate entitlement.

[15] Paragraph 43 (2) (a)

omit

subregulation 42 (2), (3) or (4); and

insert

regulation 42; and

[16] Paragraph 64 (4A) (c)*omit*

this subregulation.

insert

this subregulation;

[17] After paragraph 64 (4A) (c)*insert*

- (d) the amount (if any) of the member's unrestricted non-preserved benefits at the date when the information is provided;
- (e) the information mentioned in paragraphs (4) (j), (m), (n), (o) and (p).

Note The trustee is not required to provide the information mentioned in any of paragraphs (a) to (c) or (4) (j), (n) or (p) to the applicant in certain circumstances — see paragraphs (6) (c), (d) and (e).

[18] Paragraph 64 (6) (c)*omit*

paragraphs (4) (a) to (i) and (n)

insert

paragraphs (4) (a) to (i) and (n), or paragraphs (4A) (a) to (c),

[19] Paragraph 64 (6A) (c)*substitute*

- (c) the applicant makes a later application for:
 - (i) if subparagraph (b) (i) applies and the application relates to a superannuation interest to which paragraph (2) (e) applies — information mentioned in one or more of paragraphs (4) (a) to (i); or

- (ii) if subparagraph (b) (i) applies and the application relates to a superannuation interest to which paragraph (2) (eaa) applies — information mentioned in one or more of paragraphs (4A) (a) to (c); or
- (iii) if subparagraph (b) (ii) applies — specific information that will enable the applicant to check whether the gross value of the interest has been correctly determined in accordance with the approved method or factors.

[20] Paragraph 64 (6B) (b)

substitute

- (b) if subparagraph (6A) (c) (ii) applies — the information mentioned in paragraph (4A) (a), (b) or (c) that has been specifically requested in the later application; or
- (c) if subparagraph (6A) (c) (iii) applies — the information specifically requested in the later application that will enable the applicant to check whether the gross value of the interest has been correctly determined in accordance with the approved method or factors.

[21] Paragraph 64 (7) (a)

omit

subregulation 64 (4);

insert

subregulation 64 (4) or (4A);

[22] Schedule 1A, subclause 2 (1), definition of *Accrued benefit multiple at payment*

omit

the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse.

insert

the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose.

[23] Schedule 1A, subclause 2 (1), definition of P_{y+m}

omit

the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse.

insert

the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose.

[24] Schedule 1A, subclause 2 (1), definition of *r*, paragraph (a)

omit

the day when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse;
and

insert

the day when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose;
and

[25] Schedule 1A, subclause 2 (3), definition of *R_y*

omit

the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse.

insert

the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose.

[26] Schedule 1A, subclause 2 (4)

omit

‘the date when the new interest was created or the amount was transferred or rolled over or paid to the non-member spouse’.

insert

‘the date when the new interest was created, or the amount was transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose’.

[27] Schedule 6, subclause 3 (1), definition of *GVP*

substitute

GVP is the gross value of the pension, determined in accordance with regulation 42.

Notes

1. These Regulations amend Statutory Rules 2001 No. 303, as amended by 2002 Nos. 176 and 333; 2003 Nos. 77, 229 and 342; 2004 No. 290.
2. Notified in the *Commonwealth of Australia Gazette* on 17 December 2004.