

# **Family Law (Superannuation) Amendment Regulations 2002 (No. 2)**

## **2002 No. 333**

### **EXPLANATORY STATEMENT**

#### **STATUTORY RULES 2002 No. 333**

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

*FAMILY LAW ACT 1975*

FAMILY LAW (SUPERANNUATION) AMENDMENT REGULATIONS 2002 (No. 2)

Section 125(1) of the *Family Law Act 1975* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Family Law Legislation Amendment (Superannuation) Act 2001* (the Amendment Act) inserted Part VIIIIB into the Act, relating to the division of superannuation interests between parties to a marriage on marriage breakdown or divorce.

The purpose of the proposed Regulations is to amend the Family Law (Superannuation) Regulations 2001 (the Principal Regulations) to make minor technical and drafting changes to reflect the Government's family law and superannuation reforms relating to the valuation of superannuation interests, the entitlement of parties when interests are divided and the provision of information to parties before and after division occurs.

The Regulations:

- prescribe a superannuation interest in the Queensland Parliamentary Contributory Superannuation Fund and a superannuation interest in the scheme constituted by the NSW Judges' Pensions Act as percentage-only interest (Item 5);
- provide for additional types of payments in respect of a superannuation interest of a party to a marriage that can not be split for the purposes of the Part (Item 7);
- provide for the valuation of a superannuation interest by reference to a statement issued by the trustee of the superannuation fund (Items 38, 40 and 46);
- align the period for the adjustment of the entitlement of a non-member spouse under a base amount payment split (one of the two kinds of splits that can be made under Part VIIIIB of the Act of most superannuation interests) of an accumulation interest in a regulated superannuation fund with the period used by the fund to credit earnings to the member spouse (Item 62);
- include a power for the Minister, where a method or factors have been approved for use in determining the gross value of a defined benefit interest, to determine the information that the trustee of the fund must provide to an applicant for information under section 90MZB of the Act (Item 123); and
- provide vesting factors for additional vesting periods, required for the valuation of partially vested accumulation interests (Item 148).

Subsection 4(1) of the *Acts Interpretation Act 1901* enables, where an Act amends another Act to confer a power to make regulations, the power to be exercised after the Act has received the

Royal Assent and before the Act concerned comes into operation as if the Act had come into operation.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 provides for the commencement of the proposed Regulations on the commencement of the Amendment Act.

Regulation 3 provides for the amendment of the Principal Regulations by Schedule 1.

Schedule 1

Item 1: Regulation 3, definition of 'accumulation interest'

This item amends the definition of 'accumulation interest' to include a component of a superannuation interest that is not a defined benefit interest or a small superannuation accounts interest.

Item 2: Regulation 3, definition of 'adjusted base amount'

This item makes a drafting change to the definition of 'adjusted base amount' consequential on the amendments to Part 6 of the Principal Regulations by items 62 and 63.

Item 3: Regulation 3, definition of 'relevant date'

This item makes a drafting change to the definition of 'relevant date' consequential on the amendment of subsection 90MT(2) of the *Family Law Act 1975* (the Act) by Item 2 of Schedule 1 of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002* (the Consequential Provisions Act).

Item 4: Paragraph 6(5)(b)

This item makes a drafting correction to paragraph 6(5)(b) of the Principal Regulations.

Item 5: Regulation 9A

This item amends regulation 9A of the Principal Regulations to prescribe a superannuation interest in the Queensland Parliamentary Contributory Superannuation Funds and a superannuation interest in the scheme constituted by the NSW Judges' Pensions Act as percentage-only interests for the purpose of section 90MD of the Act.

Items 6 and 7: Paragraph 12 (1)(c) and After paragraph 12 (1)(c)

These items amend regulation 12 of the Principal Regulations to prescribe a pension payment, from an interest in the Queensland State Public Sector Scheme, to a member spouse that is an income protection benefit, an incapacity benefit or an incapacity pension to be a payment that is not a splittable payment for the purposes of Part VIIIB of the Act.

This means that these payments will be treated in a similar manner to the equivalent payments to persons covered by the Commonwealth public sector superannuation schemes.

Items 8 to 11: Subdivision 2.2.1 (heading, Subdivision 2.2.2 (heading and note), Regulation 14E and Subregulation 14F(1)

These items are drafting changes consequential on a drafting correction made to give regulation 14H an operation in relation to a payment split of a percentage-only interest.

Items 12 to 14: Subregulation 14G(1), Subregulation 14G (2) and Paragraph 14G(5)(a)

These items:

- make a drafting change, to subregulation 14G(1), consequential on a drafting correction made to give regulation 14H an operation in relation to a payment split of a percentage-only interest; and
- restrict the operation of regulation 14G to a superannuation interest in a superannuation fund or an approved deposit fund.

Item 15: Paragraph 14G(5)(b)

This item makes a drafting correction to paragraph 14G(5)(b) of the Principal Regulations.

Items 16 and 17: After subregulation 14G(5) and Subregulation 14G(7)

These items amend regulation 14G of the Principal Regulations to include a new subregulation 14G(5A) to provide a further category of payment in respect of a superannuation interest that is not a splittable payment for the purposes of applying Part VIIIB of the Act to an order or agreement which applies to the interest. Where the member spouse was being paid a pension in respect of the interest at the operative time in relation to the order or agreement, a payment after the trustee has paid to the non-member spouse his or her entitlement in respect of the interest is not such a splittable payment. An amendment consequential on the inclusion of the new subregulation is made to subregulation 14G(7).

Item 18: Subregulation 14G(8)

This item amends regulation 14G of the Principal Regulations to include subregulations 14G(8), (9), (10) and (11) in place of subregulation 14G(8).

The new subregulations make drafting and other corrections to subregulation 14G, which provides for the calculation of the non-member spouse's entitlement in respect of a superannuation interest that is subject to a splitting order or agreement, principally on account of:

- Part 5 of the Principal Regulations not providing a method for determining an amount in relation to an interest in a self managed superannuation fund (paragraph 22(2)(b) of the Principal Regulations); and
- the possibility that action may be taken by a trustee in reliance upon regulation 14G after an interest has moved into the payment phase.

Items 19 to 21: Subdivision 2.2.3 (heading and note), Regulation 14M, Subregulation 14N(1) and Subregulation 14N(2)

These items make drafting changes consequential on a drafting correction made to give regulation 14H an operation in relation to a payment split of a percentage-only interest.

Item 22: Subregulation 14N(2)

This item makes an amendment to subregulation 14N(2) of the Principal Regulations consequential on the inclusion by Item 25 of new subregulation 14N(4A).

Items 23 and 24: Paragraph 14N(4)(a) and Paragraph 14N(4)(b)

These items make drafting corrections to paragraphs 14N(4)(a) and 14N(4)(b) of the Principal Regulations.

Items 25 and 26: After subregulation 14N(4) and Subregulation 14N(6)

These items amend regulation 14N of the Principal Regulations to include a new subregulation 14N(4A) to provide a further category of payment in respect of a superannuation interest that is not a splittable payment for the purposes of applying Part VIIIB of the Act to an order or agreement which applies to the interest. Where the member spouse was being paid a pension in respect of the interest at the operative time in relation to the order or agreement, a payment after the trustee has paid to the nonmember spouse his or her entitlement in respect of the interest is not such a splittable payment. An amendment consequential on the inclusion of the new subregulation is made to subregulation 14N(6).

Item 27: Subregulations 17(2) to 5)

This item amends regulation 17 of the Principal Regulations to remove the capacity for parties, under a superannuation agreement providing for a base amount payment split of a superannuation interest in the payment phase, to state that the base amount is an amount that relates to on-going pension payments.

Items 28 to 35: Regulation 22 (heading, Subregulation 22(1), Subregulation 22(2)(notes), Subregulation 24(2), Part 5 (heading), Regulation 27, Regulation 28 (heading and Subregulation 28(1)

These items make drafting changes consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

Item 36: Subregulation 28(1), Step 3, paragraph (a)

This item makes a drafting correction to subregulation 28(1), Step 3, paragraph (3) of the Principal Regulations.

Item 37: Subregulation 28(1), after Step 3

This item makes a drafting change consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

Item 38: Regulation 29

This item amends regulation 29 of the Principal Regulations to enable the gross value of a defined benefit interest - Step 1 in the method set out in regulation 28 for a court to determine an amount in relation to such a superannuation interest - to be determined by reference to a statement (or a copy of a statement) issued by the trustee of the plan, stating the gross value determined in accordance with any method or factors approved by the Minister under regulation 38 or, if no method or factors have been approved, in accordance with the method in Schedule 2.

Item 39: Subregulation 30(1)

This item makes a drafting change to subregulation 30(1) of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

#### Item 40: Subregulation 31(2)

This item amends subregulation 31(2) of the Principal Regulations, and inserts new subregulations 31(2A) and (2B) to enable the gross value of an accumulation interest Step 1 in the method set out in regulation 28 for a court to determine an amount in relation to such a superannuation interest - to be determined by reference to a statement (or a copy of a statement) issued by the trustee of the plan, stating the gross value determined in accordance with any method or factors approved by the Minister under regulation 38 or, if no method or factors have been approved, in accordance with the method in Schedule 2.

#### Item 41: Subregulation 31(3)

This item makes a drafting amendment to subregulation 31(3) of the Principal Regulations consequential on the insertion by Item 40 of new subregulation 31(2A).

#### Items 42 to 44: Paragraph 31 (4)(a) Paragraph 31(4)(b) and Paragraph 31(4)(c)

These items make amendments to subregulation 31(4) of the Principal Regulations to permit the gross value of an accumulation interest to be determined by reference to a copy of a member information statement.

#### Item 45: After subregulation 31(4A)

This item inserts new subregulation 31(4B) to provide for the operation of regulation 31 in situations where the value of an interest is expressed by a superannuation fund, in statements that they provide to members, in any particular way, and for where 2 or more values are included in a statement.

#### Item 46: Regulation 32

This item amends regulation 32 of the Principal Regulations to enable the gross value of a partially vested accumulation interest - Step 1 in the method set out in regulation 28 for a court to determine an amount in relation to such a superannuation interest - to be determined by reference to a statement (or a copy of a statement) issued by the trustee of the plan, stating the gross value determined in accordance with any method or factors approved by the Minister under regulation 38 or, if no method or factors have been approved, in accordance with the method in Schedule 3.

#### Items 47 and 48: Subregulation 37(2) and Regulation 38 (heading)

These items make drafting changes to subregulation 37(2) of the Principal Regulations, and also to the heading to regulation 38, consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

#### Items 49 and 50: Paragraphs 38(2)(a) and (b) and Paragraph 38(2)(c)

These items make drafting corrections to subregulation 38(2) of the Principal Regulations, and also drafting changes to subregulation 38(2) consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

#### Items 51 to 61: Paragraph 38(2)(d) Subregulation 38(3) (note), Regulation 39, Regulation 40 (heading) Subregulation 40(1) Subregulation 40(1) (after Step 2), Paragraph 42(2)(b) Paragraph 43(2)(a) Subregulation 42(3) Regulation 43A (heading,) and Subregulation 43A(2) (note)

These items make drafting changes to provisions in Divisions 5.1 and 5.2 of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

## Items 62 and 63: After Division 6.1 Regulations 47 and 48

These items replace regulations 47 and 48 of the Principal Regulations, which provide for the growth of a base amount specified in a superannuation agreement or allocated by the court in a splitting order, with new Division 6.1A to provide for:

- a base amount to also be adjusted up until the end of the day before a new interest is created for the non-member spouse, or an amount is transferred or rolled over or paid pursuant to the payment split provisions of the Superannuation Industry (Supervision) Regulations or the Retirement Savings Account Regulations or, in reliance on r.14G of the Principal Regulations, to make future payments in respect of the superannuation interest to which such an agreement or order applies not splittable for the purpose of applying new Part VIIIB of the Act to the order or agreement (new regulations 45B and 45C, particularly in relation to 'terminating action');
- in respect of an accumulation interest other than one in a self managed superannuation fund -the adjustment period to be the period used by the plan to allot net earnings or allocate investment earnings to the member spouse (new regulation 45C, particularly in relation to 'allotment period' and 'allocation period');
- in respect of such an interest, the interest rate at which the base amount is to be adjusted to be the rate at which the net earnings of the plan are or would be allotted to the member spouse (new subregulation 45D(2)); and
- in respect of a defined benefit interest or an interest in a self managed superannuation fund -the interest rate at which the base amount is to be adjusted to be the rate calculated by the Australian Government Actuary and published in the Gazette (the rate must be one calculated by reference to a rate that is 2.5 percentage points above the percentage change in average weekly ordinary times earnings (AWOTE) most recently published by the Australian Bureau of Statistics) if the adjustment period is a full year, or a proportion of such a rate for a partial year (new subregulations 45D(3) and 45D(4)).

## Items 64 and 65: Paragraph 49(1)(a), Paragraph 50(1)(a)

These items make drafting corrections in subregulations 49(1) and 50(1).

Items 66 to 71: Subregulation 50(3) (formula), Subregulation 50(3) (definition of V), Subregulation 51(7) (formula), Subregulation 51(7) (definition of V), Subregulation 53(4) (formula) and Subregulation 53(4) (definition of V)

These items make drafting changes to provisions in Division 6.2 of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

## Items 72 and 73: Regulation 54 (heading) and Subregulation 54(1)

These items make drafting corrections in the heading of regulation 54 and to subregulation 54(1) of the Principal Regulations.

Items 74 to 77: Subregulation 54(2) (formula), Subregulation 54(2) (definition of V), Subregulation 54A(5) (formula) and Subregulation 54A(5) (definition of V)

These items make drafting changes to provisions in Division 6.2 of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

## Item 78: Regulation 55

This item makes an amendment to regulation 55 of the Principal Regulations consequential on the amendment by Item 27 of regulation 17.

Items 79 to 82: Subregulation 57(3) (formula), Subregulation 57(3) (definition of V), Subregulation 58(7) (formula) and Subregulation 58(7) (definition of V)

These items make drafting changes to provisions in Division 6.3 of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

Item 83: Subregulation 58A(5), formula

This item makes a drafting correction to the formula in subregulation 58A(5) of the Principal Regulations, and also a drafting change to the formula consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule I of the Consequential Provisions Act.

Item 84: Subregulation 58A(5) definition of ABA

This item makes a drafting correction in subregulation 58A(5) of the Principal Regulations.

Items 85: Subregulation 58A(5) definition of V

This item makes a drafting change to provisions in Division 6.3 of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

Item 86: Subregulation 58D(3), formula

This item makes a drafting correction to the formula in subregulation 58D(3) of the Principal Regulations, and also a drafting change to the formula consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule I of the Consequential Provisions Act.

Item 87: Subregulation 58D(3) definition of V

This item makes a drafting change to a term in the formula in subregulation 58D(3) of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

Item 88: Subregulation 63(2)

This item amends subregulation 63(2) of the Principal Regulations consequential on the amendment by Item 107 of subregulation 63(6).

Item 89: Paragraphs 63(2)(d) and (e)

Item 89 amends paragraph 63(2)(d) of the Principal Regulations consequential on the amendments by Items 91 to 95 of subregulation 63(3).

Item 89 also amends paragraph 63(2)(e) of the Principal Regulations consequential on the amendment by Item 107 of subregulation 63(6).

Item 89 also inserts new paragraph 63(2)(ea) to provide that, if the application for information specifically requests the trustee to provide the withdrawal benefit in relation to the member at a particular date, the trustee must provide the withdrawal benefit at that date. This information, with other information that the applicant will obtain in relation to other superannuation interests of the member spouse, will enable the applicant to determine the member spouse's total

withdrawal value for the purpose of regulation 20 of the Principal Regulations and section 90MQ of the Act. If the application specifically requests the trustee to provide the information mentioned in paragraph 63(2)(ea), new paragraph 63(6)(a) inserted by Item 107 provides that the trustee is not required to provide most of the additional information under regulation 63. The trustee is, however, required to provide information about the preservation status of components of the interest and details about any eligible termination payments.

Items 90 and 91: Paragraph 63(3)(a) and Paragraph 63(3)(b)

These items amend subregulation 63(3) of the Principal Regulations consequential on the insertion by Item 94 of paragraphs 63(3)(c), (d) and (e).

Items 92 and 93: Subparagraph 63(3)(b)(v) and Paragraph 63(3)(b) (at the foot)

These items, further to the amendment by Item 107 of subregulation 63(6), insert a note at the end of paragraph 63(3)(b) of the Principal Regulations.

Item 94: After paragraph 63(3)(b)

This item inserts new paragraphs 63(3)(c), (d) and (e) to require the trustee, if the superannuation interest of the member spouse was in the payment phase at the date that the application was received by the trustee or any earlier date specified in the application, to provide information about any lump sum payable at the time the information is provided or at any future time.

Item 95: Subregulation 63(4)

This item amends subregulation 63(4) so that the information requirements set out in this subregulation are those that apply to an accumulation interest other than a partially vested accumulation interest, consequential on the insertion of subregulation 63(4A) by Item 106.

This item also inserts new paragraph 63(4)(aa) to require the trustee, if the superannuation interest of the member spouse was in the growth phase at the date that the application was received by the trustee or any earlier date specified in the application, to provide information about the value of the benefits that would have been payable in respect of the interest at that date or earlier date if the member spouse had voluntarily ceased to be a member of the plan. New paragraph 63(6)(c) inserted by Item 107 limits the obligation to provide that information unless a record of it is in the trustee's possession, power or control.

Item 96: Subparagraph 63(4)(a)(iii)

This item makes a drafting change to subparagraph 63(4)(a)(iii) of the Principal Regulations

Items 97 and 98: Paragraph 63(4)(b) and Subparagraph 63(4)(b)(iii)

These items make drafting changes to paragraph 63(4)(b) and subparagraph 63(4)(b)(iii) of the Principal Regulations.

Item 99: Subparagraphs 63(4) (c)(ii) and (iii)

This item makes drafting corrections to subparagraphs 63(4)(c)(ii) and (iii) of the Principal Regulations.

Item 100: After paragraph 63(4)(c)

This item inserts new paragraph 63(4)(ca) to set out the information, omitted from the



Principal Regulations by an oversight, that the trustee is required to provide, if:

- the superannuation interest of the member spouse was in the growth phase at the date that the application was received by the trustee or any earlier date specified in the application; and
- no member information statement in relation to the interest has been provided to the member.

Item 101: Subparagraphs 63(4)(d)(i) and (ii)

This item makes drafting corrections to subparagraphs 63(4)(d)(i) and (ii) of the Principal Regulations.

Item 102: Paragraph 63(4)(e)

This item amends paragraph 63(4)(e) of the Principal Regulations, which requires the trustee to provide information about the member's unrestricted non-preserved benefits if the interest is in an approved deposit fund, to provide that the time that the trustee should value the benefits is the time that the information is provided rather than at the time the application for information was received by the trustee.

Item 103: Subparagraph 63(4)(f)(i)

This item amends subparagraph 63(4)(f)(i) of the Principal Regulations, which requires the trustee to provide information about the lump sum tax components of any eligible termination payment that might be made in respect of the member spouse's superannuation interest, to provide that the time that the trustee should assume that the eligible termination payment was made should be at the time that the information is provided rather than at the time the application for information was received by the trustee.

Item 104: Subparagraph 63(4)(x)

This item makes a technical drafting changes consequential on the deletion of subparagraph 63(4)(h) by Item 105.

Item 105: Subparagraph 63(4)(h)

This item omits subparagraph 63(4)(h) of the Principal Regulations, consequential on the insertion of subregulation 63(4A) by Item 106.

Item 106: After subregulation 63(4)

This item inserts subregulation 63(4A) into the Principal Regulations to set out the information that the trustee is to provide if the superannuation interest is a partially vested accumulation interest in the growth phase.

The information requirements are similar to those for accumulation interests that are not partially vested, set out in subregulation 63(4) of the Principal Regulations. However, for partially vested accumulation interests some additional information is required:

- the total amount that would be standing to the credit of the member if the interest were fully vested;
- the vesting term that applies to the interest; and

- the date when the vesting term commenced.

#### Item 107: Subregulation 63(6)

This item amends subregulation 63(6) of the Principal Regulations and inserts new subregulations 63(7) and (8) to provide for the provision by the trustee of particular categories of information in particular circumstances.

Where the trustee is asked for (historical) information about an interest that was making on-going pension payments (new paragraph 63(6)(b)), or for information about a member spouse's withdrawal benefit (new paragraph 63(6)(a)), the value of an interest at a particular (earlier) date (new paragraph 63(6)(c)) or the contents of member information statements given to the member spouse (new subparagraph 63(6)(d)(iii)), the trustee need not provide that information unless a record of it is in its possession, power or control.

In relation to the last of these categories of information, the information also needs only to be provided by the trustee if the application for information specifically requests that the trustee provide it (new subparagraph 63(6)(d)(i)).

Where the trustee is asked for information about a member spouse's withdrawal benefit and a record of the information is in the trustee's possession, power or control, the trustee is not required to provide most of the other information mentioned in regulation 63 to the applicant. The trustee is, however, required to provide information about preservation status and eligible termination payments.

New subregulation 63(7) provides for the situations where the value of an interest is expressed by a superannuation fund, in statements that they provide to members, in any particular way, and for where 2 or more values are included in a statement.

#### Item 108: Subregulation 64(2)

This item amends subregulation 64(2) of the Principal Regulations consequential on the amendment by Item 123 of subregulation 64(6).

#### Item 109: Paragraph 64(2)(d)

This item amends paragraph 64(2)(d) of the Principal Regulations consequential on the insertion by Item 116 of paragraphs 64(3)(c), (d) and (e).

#### Item 110: Paragraph 64(2)(e)

This item amends paragraph 64(2)(e) of the Principal Regulations consequential on the amendment by Item 123 of subregulation 64(6).

#### Item 111: After paragraph 64(2)(e)

This item inserts new paragraph 64(2)(ea) to provide that, if the application for information specifically requests the trustee to provide the withdrawal benefit in relation to the member at a particular date, the trustee must provide the withdrawal benefit at that date. This information, with other information that the applicant will obtain in relation to other superannuation interests of the member spouse, will enable the applicant to determine the member spouse's total withdrawal value for the purpose of regulation 20 of the Principal Regulations and section 90MQ of the Act. If the application specifically requests the trustee to provide the information mentioned in paragraph 64(2)(ea), new paragraph 64(6)(a) inserted by Item 123 provides that the trustee is not required to provide most of the other information under regulation 64. The trustee is, however, required to provide information about preservation status and eligible termination payments.

Items 112 to 113: Paragraph 64(3)(a) and Paragraph 64(3)(b)

These items amend subregulation 64(3) of the Principal Regulations consequential on the insertion by Item 116 of paragraphs 64(3)(c), (d) and (e).

Items 114 and 115: Subparagraph 64(4)(b)(v) and Paragraph 64(3)(b) (at the foot)

These items, further to the amendment by Item 123 of subregulation 64(6), insert a note at the end of paragraph 64(3)(b) of the Principal Regulations.

Item 116: After paragraph 64(3)(b)

This item inserts new paragraphs 64(3)(c), (d) and (e) to require the trustee, if the superannuation interest of the member spouse was in the payment phase at the date that the application was received by the trustee or any earlier date specified in the application, to provide information about any lump sum payable at the time the information is provided or at any future time.

Item 117: Subparagraphs 64(4)(k)(i) and (ii)

This item makes drafting corrections to subparagraph 64(4)(k)(i) and (ii) of the Principal Regulations.

Item 118: Paragraph 64(4)(1)

This item amends paragraph 64(4)(1) of the Principal Regulations, which requires the trustee to provide information about the member's unrestricted non-preserved benefits if the interest is in an approved deposit fund, to provide that the time that the trustee should value the benefits is the time that the information is provided rather than at the time the application for information was received by the trustee.

Item 119: Subparagraph 64(4)(m)(i)

This item amends subparagraph 64(4)(m)(i) of the Principal Regulations, which requires the trustee to provide information about the lump sum tax components of any eligible termination payment that might be made in respect of the member spouse's superannuation interest, to provide that the time that the trustee should assume that the eligible termination payment was made should be at the time that the information is provided rather than at the time the application for information was received by the trustee.

Item 120: Subparagraph 64(4)(n)(i)

This item makes a drafting change to subparagraph 64(4)(n)(i) of the Principal Regulations consequential on the amendment of subsection 90MT(2) of the Act by Item 2 of Schedule 1 of the Consequential Provisions Act.

Items 121 and 122: Paragraph 64(4)(o) and After paragraph 64(4)(o)

These items insert new paragraph 64(4)(p) to require the trustee, if the superannuation interest of the member spouse was in the growth phase at the date that the application was received by the trustee or any earlier date specified in the application, to provide information about the gross value of the interest determined in accordance with any method or factors approved by the Minister under regulation 38 or, if no method or factors have been approved, in accordance with the method in Schedule 2.

However, new paragraph 64(6)(e) inserted by Item 123 limits the obligation to provide that information to the situation where the applicant for information specifically requests the trustee to provide it and the trustee chooses to provide it.

#### Item 123: Subregulation 64(6)

This item amends subregulation 64(6) of the Principal Regulations and inserts new subregulations 64(7) and (8) to provide for the provision by the trustee of particular categories of information in particular circumstances.

Where the trustee is asked for (historical) information about an interest that was making on-going pension payments (new paragraph 64(6)(b)), or for information about a member spouse's withdrawal benefit (new paragraph 64(6)(a)) or about an interest other than one in a constitutionally protected fund (new paragraph 64(6)(d)), the trustee need not provide information about the on-going pension payments or any surcharge debt recorded in the member information statement issued most recently before the date specified in the application for information unless a record of that information is in the trustee's possession, power or control.

Where the trustee is asked for information about a member spouse's withdrawal benefit and a record of the information is in the trustee's possession, power or control, the trustee is not required to provide any other information mentioned in regulation 64 to the applicant.

The information mentioned in paragraph 64(4)(p) about the gross value of the interest needs only to be provided by the trustee if the applicant requests that the trustee provide it and the trustee chooses to do so (new paragraph 64(6)(e)). In that case, the trustee is not required to provide the other information mentioned in regulation 64 that the applicant would require to determine the value of the interest in accordance with the method in Schedule 2 or any method or factors approved by the Minister under regulation 38.

#### Item 124: Subregulation 66(2)

This item amends subregulation 66(2) of the Principal Regulations consequential on the amendment by Item 132 of subregulation 66(6).

#### Items 125 and 126: Paragraph 66(2)(d) and Paragraph 66(2)(e)

These items amend subregulation 64(2) of the Principal Regulations consequential on the amendment by Item 132 of subregulation 66(6).

#### Item 127: After paragraph 66(2)(e)

This item inserts new paragraph 66(2)(ea) to provide that, if the application for information specifically requests the trustee to provide the withdrawal benefit in relation to the member at a particular date, the trustee must provide the withdrawal benefit at that date. This information, with other information that the applicant will obtain in relation to other superannuation interests of the member spouse, will enable the applicant to determine the member spouse's total withdrawal value for the purpose of regulation 20 of the Principal Regulations and section 90MQ of the Act. If the application specifically requests the trustee to provide the information mentioned in paragraph 66(2)(ea), new paragraph 66(6)(a) inserted by Item 132 provides that the trustee is not required to provide most of the information under regulation 66. The trustee is, however, required to provide information about the preservation status and eligible termination payments.

#### Items 128 and 129: Subregulation 66(3) (at the foot) and Paragraph 66(4)(c) (at the foot)

These items insert notes following subregulation 66(3) and paragraph 66(4)(c) of the Principal Regulations consequential on the amendment by Item 132 of subregulation 66(6).

Item 130: Subparagraphs 66(4)(d)(i) and (ii)

This item makes drafting corrections to subparagraphs 66(4)(d)(i) and (ii) of the Principal Regulations.

Item 131: Subparagraph 66(4)(e)(i)

This item amends subparagraph 66(4)(e)(i) of the Principal Regulations, which requires the trustee to provide information about the lump sum tax components of any eligible tennination payment that might be made in respect of the member spouse's superannuation interest, to provide that the time that the trustee should assume that the eligible tennination payment was made should be at the time that the information is provided rather than at the time the application for information was received by the trustee.

Item 132: Subregulation 66(6)

This item amends subregulation 66(6) of the Principal Regulations to insert new paragraph 66(6)(a) providing that where the trustee is asked for information about a member spouse's withdrawal benefit and a record of the information is in the trustee's possession, power or control, the trustee is not required to provide most of the other information mentioned in regulation 66 to the applicant. The trustee is, however, required to provide information about the preservation status and eligible termination payments.

Item 133: Subregulation 67(2)

This item amends subregulation 67(2) of the Principal Regulations consequential on the amendment by Item 137 of subregulation 67(5).

Item 134: Paragraph 67(2)(d)

This item amends paragraph 67(2)(d) of the Principal Regulations consequential on the amendment by Item 137 of subregulation 67(5).

Item 135: After paragraph 67(2)(e)

This item inserts new paragraph 67(2)(ea) to provide that, if the application for information specifically requests the trustee to provide the withdrawal benefit in relation to the member at a particular date, the trustee must provide the withdrawal benefit at that date. This information, with other information that the applicant will obtain in relation to other superannuation interests of the member spouse, will enable the applicant to determine the member spouse's total withdrawal value for the purpose of regulation 20 of the Principal Regulations and section 90MQ of the Act. If the application specifically requests the trustee to provide the information mentioned in paragraph 67(2)(ea), new paragraph 67(5)(a) inserted by Item 137 provides that the trustee is not required to provide most of the other information under regulation 66.

Item 136: Subregulation 67(3) (at the foot)

This item inserts a note following subregulation 67(3) consequential on the amendment by Item 137 of subregulation 67(5).

Item 137: Subregulation 67(5)

This item amends subregulation 67(5) of the Principal Regulations to insert new paragraph 67(5)(a) providing that where the trustee is asked for information about a member spouse's withdrawal benefit and a record of the information is in the trustee's possession, power or control, the trustee is not required to provide most of the other information mentioned in regulation 67 to the applicant.

Items 138 and 139: Subparagraph 70(2)(b)(ii) and After subparagraph 70(2)(b)(ii)

These items insert subparagraph 70(2)(b)(iii) to require the written notice given by the trustee to the non-member spouse after the operative time of the payment split to state the percentage that is to apply to all splittable payments if the agreement or order specifies such a percentage.

Item 140: Paragraph 70(2)(e) and (f)

This item omits paragraphs 70(2)(e) and (f) of the Principal Regulations. The inclusion of information relating to the lump sum tax components in the written notice given by the trustee to the non-member spouse after the operative time of the payment split was of no benefit to the non-member spouse.

Items 141 and 142: Subregulation 72(2) and Subregulation 72(3)

These items amend regulation 72 of the Principal Regulations to provide for notification to the trustee by the non-member spouse of his or her full name and contact details after a superannuation interest becomes subject to a payment split. The items also provide for the non-member spouse, where the superannuation interest is subject to a payment split or a payment flag, to notify the trustee of any change of address.

Item 143: Schedule 1, Form 1, heading

This item makes a drafting change to the title of Form 1 of Schedule 1 of the Principal Regulations.

Item 144: Schedule 1 Form 6 paragraph (b) first mentioned

This item makes a drafting change to paragraph (b) (first mentioned) of Form 6 of Schedule 1 of the Principal Regulations.

Item 145: Schedule 2 subclause 3(2), definition of  $f_{y+1}$

This item makes a drafting change to the definition of  $f_{y+1}$  in subclause 3(2) of Schedule 2 of the Principal Regulations.

Item 146: Schedule 3 subclause 2(1), definition of A

This item makes a drafting change to the definition of A in subclause 2(1) of Schedule 3, consequential on the insertion of subclause 3A by Item 148.

Item 147: Schedule 3 subclause 2(2), definition of  $f_{y+1}$

This item makes a drafting change to the definition of  $f_{y+1}$  in subclause 2(2) of Schedule 3 of the Principal Regulations.

Item 148: Schedule 3, clauses 3 and 4

This item substitutes new clauses 3, 3A and 4 of Schedule 3 for clauses 3 and 4 of Schedule 3 in the Principal Regulations.

New clause 3 includes a number of amendments to original clause 3 of Schedule 3 of the Principal Regulations:

- inserts new subclauses 3(2A) and (2B) to enable the gross value of a partially vested accumulation interest - Step 1 in the method set out in regulation 28 for a court to determine an amount in relation to such a superannuation interest - to be determined by reference to a statement (or a copy of a statement) issued by the trustee of the plan, stating the gross value determined in accordance with any method or factors approved by the Minister under regulation 38 or, if no method or factors have been approved, in accordance with the method in Schedule 3;
- makes a drafting change to subclause 3(3) of Schedule 3 of the Principal Regulations consequential on the insertion of new subclauses 3(2A) and (2B);
- amends subclause 3 (4) of Schedule 3 of the Principal Regulations to permit the gross value of a partially vested accumulation interest to be determined by reference to a copy of a member information statement; and
- inserts new subclause 3(4) in Schedule 3 to provide for the operation of subclauses 3(2), (2A), (2B) and (3) of Schedule 3 in situations where the value of an interest is expressed by a superannuation fund, in statements that they provide to members, in any particular way, and for where 2 or more values are included in a statement.

This item also corrects a drafting error by inserting new clause 3A into Schedule 3 of the Principal Regulations. New clause 3A sets out how to determine the amount that would be standing to the credit of the member spouse in respect of the superannuation interest if it were fully vested, in similar terms to the method set out in clause 3 for determining the amount of the actual vested benefit. This information is required to calculate the value of a partially vested accumulation interest, in accordance with the method set out in clause 2 of Schedule 3 of the Principal Regulations and was mistakenly omitted from the Principal Regulations.

This item also replaces existing clause 4 in the Principal Regulations with new clause 4. The effect of this is to include vesting factors for additional vesting periods, as a result of recent advice from the superannuation industry that there are some funds that have vesting periods that were not covered in the Principal Regulations.