



New South Wales

Superannuation Legislation Amendment (Family Law) Act 2003 No 77

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts and Regulation	2
Schedule 1 Amendment of First State Superannuation Act 1992 No 100	3
Schedule 2 Amendment of Judges' Pensions Act 1953 No 41	6
Schedule 3 Amendment of Local Government and Other Authorities (Superannuation) Act 1927 No 35	12
Schedule 4 Amendment of New South Wales Retirement Benefits Act 1972 No 70	14
Schedule 5 Amendment of Parliamentary Contributory Superannuation Act 1971 No 53	17
Schedule 6 Amendment of Police Association Employees (Superannuation) Act 1969 No 33	23
Schedule 7 Amendment of Police Regulation (Superannuation) Act 1906 No 28	24
Schedule 8 Amendment of Public Authorities Superannuation Act 1985 No 41	31

Superannuation Legislation Amendment (Family Law) Act 2003 No 77

Contents

	Page
Schedule 9	33
Schedule 10	34
Schedule 11	41
Schedule 12	50
Schedule 13	57



New South Wales

Superannuation Legislation Amendment (Family Law) Act 2003 No 77

Act No 77, 2003

An Act to amend various superannuation Acts to accommodate Commonwealth legislation relating to the division of superannuation entitlements on marriage breakdown, to extend benefits to de facto partners in certain schemes and to update pension adjustment provisions; and for other purposes. [Assented to 25 November 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Amendment (Family Law) Act 2003*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Schedules 1 [2]–[4], 2, 5, 6, 7, 10, 11 and 12 commence on a day or days to be proclaimed.
- (3) Schedule 13 [2] is taken to have commenced on 29 November 2002.

3 Amendment of Acts and Regulation

The Acts and Regulation specified in Schedules 1–13 are amended as set out in those Schedules.

Schedule 1 Amendment of First State Superannuation Act 1992 No 100

(Section 3)

[1] Section 20B Matters to be dealt with by trust deed and rules

Insert after section 20B (f):

- , and
- (g) the levying of charges by FTC for administration and other costs payable by FTC and resulting from requirements under Part VIII B of the *Family Law Act 1975* of the Commonwealth or the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, and
 - (h) the payment into the Fund of any charges or costs referred to in paragraph (g).

[2] Sections 20BA and 20BB

Insert after section 20B in Division 2 of Part 4:

20BA Family law superannuation payments from other schemes

(1) In this section:

non-member spouse benefit means any of the following payments:

- (a) a family law superannuation payment under section 15C of the *Judges' Pensions Act 1953*,
- (b) a family law superannuation payment under section 29C of the *Parliamentary Contributory Superannuation Act 1971*,
- (c) a family law superannuation payment under section 3A of the *Police Association Employees (Superannuation) Act 1969*,
- (d) a family law superannuation payment under section 14P of the *Police Regulation (Superannuation) Act 1906*,
- (e) a family law superannuation payment under section 27AJ of the *State Authorities Non-contributory Superannuation Act 1987*,

- (f) a family law superannuation payment under section 45I of the *State Authorities Superannuation Act 1987*,
- (g) a family law superannuation payment under section 61WB of the *Superannuation Act 1916*.

transfer day, in relation to a person whose non-member spouse benefit is transferred under any of the transfer provisions, means the day on which the benefit is transferred under the provision concerned.

transfer provision means any of the following provisions:

- (a) section 15C of the *Judges' Pensions Act 1953*,
- (b) section 29C of the *Parliamentary Contributory Superannuation Act 1971*,
- (c) section 3A of the *Police Association Employees (Superannuation) Act 1969*,
- (d) section 14P of the *Police Regulation (Superannuation) Act 1906*,
- (e) section 27AJ of the *State Authorities Non-contributory Superannuation Act 1987*,
- (f) section 45I of the *State Authorities Superannuation Act 1987*,
- (g) section 61WB of the *Superannuation Act 1916*.

transferred non-member spouse means a person whose non-member spouse benefit is transferred under a transfer provision.

- (2) On and from the transfer day, a person whose non-member spouse benefit is transferred under a transfer provision to FTC for crediting to the Fund, and who is not already a member of the superannuation scheme established under this Act and the trust deed, is an associate member of the Fund.
- (3) FTC must establish in the Fund an account in respect of any such associate member.
- (4) FTC must credit to the Fund the amount transferred to FTC under a transfer provision.
- (5) FTC must credit to the account of each transferred non-member spouse an amount equal to the non-member spouse benefit.

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- (6) Any such amount is taken to have been credited to the account on the day following the transfer day.
 - (7) An amount credited under this section to the account of a transferred non-member spouse is, for the purposes of this Act and the trust deed, to be treated as if it were contributed or preserved under this Act and the trust deed by or on behalf of the transferred non-member spouse.

20BB Rules

Without limiting section 13, 14, 18 or 20, the trust deed and the rules under the trust deed may make provision for or with respect to matters arising from the transfer of a non-member spouse benefit, including:

- (a) the establishment of accounts in the Fund for transferred non-member spouses who are not members of the Fund,
- (b) the classification of transferred non-member spouses as associate members of the Fund on the establishment of their accounts,
- (c) the crediting of amounts to the accounts of transferred non-member spouses,
- (d) the investment of amounts held in accounts of transferred non-member spouses.

[3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment (Family Law) Act 2003 (but only to the extent that it amends this Act)

[4] Dictionary

Insert “, or a transfer under section 20BA,” after “Commonwealth” in the definition of *associate member*.

Schedule 2 Amendment of Judges' Pensions Act 1953 No 41

(Section 3)

[1] Section 2 Definitions

Insert after section 2 (2):

- (3) Notes included in this Act do not form part of this Act.

[2] Part 3A

Insert after Part 3:

Part 3A Provisions relating to family law superannuation legislation

15A Definitions

In this Part:

complying superannuation fund means:

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) the First State Superannuation Fund.

family law superannuation entitlement has the same meaning as it has in section 15C (2) (a).

family law superannuation legislation means Part VIII B of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

family law superannuation payment means an amount payable under this Part to or in respect of a non-member spouse.

First State Superannuation Fund means the Fund maintained and administered under the trust deed entered into under the *First State Superannuation Act 1992*.

flag lifting agreement has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

FTC means the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.

member spouse, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

non-member spouse, in relation to a superannuation interest under this Act, means the spouse who is not the member spouse in relation to that interest.

payment split has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

splitting order has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

spouse of a person means a person who is or was married to that person.

superannuation agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

superannuation interest means an interest that a judge, retired judge or any other person has as a member or a beneficiary of the superannuation scheme established under this Act.

15B Payment of benefits where superannuation interests affected by flagging order or payment split

Nothing in this Act:

- (a) requires the payment of a benefit or any other payment under this Act, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents the payment or reduction of a benefit or any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

15C Payment splits

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation payments to or in respect of non-member spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

Note. The effect of satisfying those requirements is that payments to the member spouse of a benefit under this Act will be no longer liable to be split for the purposes of the family law superannuation legislation.

- (2) A non-member spouse has a family law superannuation entitlement to which this section applies if:
- (a) the non-member spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest of a member spouse (a *family law superannuation entitlement*), and
 - (b) the member spouse is in receipt of a pension, or is eligible to be paid a lump sum benefit, under this Act, and
 - (c) the family law superannuation entitlement has not been paid to the non-member spouse by the member spouse, or waived by the non-member spouse, in accordance with the family law superannuation legislation.
- (3) On written notice by a member spouse or a non-member spouse, or by any other person or court, of a family law superannuation entitlement of a non-member spouse to which this section applies, the Minister must take one of the following actions:
- (a) pay or release to the non-member spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable),
 - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-member spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable), to be held for the benefit of the non-member spouse.

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- (4) The Minister may take the action set out in subsection (3) (a) only if the member spouse is in receipt of a pension under this Act or the non-member spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle a person to payment of a benefit if the Fund were a complying superannuation fund.
 - (5) The Minister must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if:
 - (a) the payment is not payable under subsection (3) (a), and
 - (b) a non-member spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.
 - (6) For the purposes of this section, the value of a family law superannuation entitlement or a family law superannuation payment of a non-member spouse is to be determined in accordance with any applicable provisions of the regulations and the family law superannuation legislation.

15D Reduction of benefits of member spouses

- (1) The Minister may reduce the amount of any benefit payable under this Act to or in respect of a member spouse (or a spouse or de facto partner of a member spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-member spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) A pension may be reduced under this section even though payment of the pension first commenced before the payment of the amount to or in respect of the non-member spouse.
- (4) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

15E Accrued benefit multiples

- (1) For the purposes of the family law superannuation legislation, the accrued benefit multiple of a member spouse is the period (in years and parts of years) that the member spouse served as a judge in the judicial office (including any prior judicial service within the meaning of section 8) that he or she held immediately before becoming eligible for payment of a pension or a lump sum benefit.

Note. Under the family law superannuation legislation, the accrued benefit multiple is a factor used to determine the amount payable to a non-member spouse who becomes entitled to a payment.

- (2) In the case of a member spouse who is the widow or widower of a former judge, the accrued benefit multiple is the same as the accrued benefit multiple for the former judge.

15F Regulations

Regulations may be made for or with respect to the following matters:

- (a) elections by non-member spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom a family law superannuation payment under section 15C or a payment referred to in paragraph (i) may be paid,
- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the member spouse's superannuation interest under this Act before the payment is paid,
- (d) the payment of fees for or with respect to family law superannuation payments,
- (e) notice of family law superannuation entitlements and payment splits,
- (f) the periods for payment of family law superannuation payments,
- (g) the calculation of payments and entitlements for the purposes of the family law superannuation legislation or this Part (including payments under paragraph (i)),
- (h) the calculation of the value of superannuation interests of member spouses for the purposes of the family law superannuation legislation or this Part,

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- (i) additional circumstances in which an offer may be made, and payment may be made, to a non-member spouse where a superannuation interest is subject to a payment split,
 - (j) the charging of, and payment from, the Consolidated Fund of a payment made in the circumstances prescribed under paragraph (i),
 - (k) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of member spouses, or spouses or de facto partners of member spouses, as a consequence of payments under the family law superannuation legislation or this Part,
 - (l) without limiting paragraph (k), the commutation of pensions or parts of pensions for the purposes of the reduction of benefits as a consequence of payments under the family law superannuation legislation or this Part.

[3] Section 16 Payment to legal personal representative in certain cases

Insert “or family law superannuation payment within the meaning of Part 3A” after “benefit”.

[4] Section 16A Accrued benefit multiples for family law superannuation purposes

Omit the section.

[5] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Family Law)
Act 2003* (but only to the extent that it amends this Act)

**Schedule 3 Amendment of Local Government and
Other Authorities (Superannuation)
Act 1927 No 35**

(Section 3)

[1] Section 15BO Pension payable to widow, widower or de facto partner of deceased pensioner

Omit section 15BO (1). Insert instead:

- (1) Subject to section 15BOB, if a pensioner under section 15BF, 15BG or 15BH dies leaving a widow, widower or de facto partner, the board must pay to the widow, widower or de facto partner a pension at the rate of 62.5% of the rate at which the deceased pensioner was receiving, or entitled to receive, a pension under section 15BF, 15BG or 15BH immediately before his or her death.

[2] Section 15BO (2) and (4)

Insert “or enters into a de facto relationship” after “marries” wherever occurring.

[3] Section 15BO (2)

Insert “or relationship” after “marriage”.

[4] Section 15BO (2) and (4)

Omit “widow or widower” wherever occurring.

Insert instead “widow, widower or de facto partner”.

[5] Section 15BO (3)

Insert “or entering into a de facto relationship” after “marrying”.

[6] Section 15BO (4)

Insert “or in a de facto relationship” after “married” wherever occurring.

[7] Section 15BO (4) (b)

Insert “or relationship” after “marriage”.

[8] Section 15BO (5)

Omit the subsection. Insert instead:

(5) In this section:

de facto partner of a deceased pensioner means, if the deceased pensioner was, at the time of his or her death, in a de facto relationship within the meaning of the *Property (Relationships) Act 1984* with a person, that person.

eligible widow, widower or de facto partner of a deceased pensioner means a widow, widower or de facto partner of the deceased pensioner who has or had in his or her marriage or relationship with the deceased pensioner a child, being:

- (a) a child of the widow, widower or de facto partner and the deceased pensioner who was, in the opinion of the board, wholly or substantially dependent on the deceased pensioner at any time during the marriage or relationship, or
- (b) a child of the deceased pensioner who was conceived before and born alive after the death of the pensioner.

[9] Section 15BOB Spouses' pensions generally

Omit "late husband or wife" in section 15BOB (4).

Insert instead "deceased pensioner".

[10] Schedule H Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment (Family Law) Act 2003 (but only to the extent that it amends this Act)

Schedule 4 Amendment of New South Wales Retirement Benefits Act 1972 No 70

(Section 3)

[1] Section 27A Pension to be paid to eligible surviving spouse or de facto partner

Omit section 27A (1). Insert instead:

- (1) Despite any other provision of this Act, a pension is payable, on the death of a former contributor who elected to take a pension referred to in section 26 (7) (c) or 27 (2) (c), to an eligible surviving spouse or de facto partner who became the spouse or de facto partner of the former contributor after the time the pension became payable to the former contributor.

[2] Section 27A (2) and (3)

Insert “or de facto partner” after “spouse” wherever occurring.

[3] Section 27A (2)

Insert “or in a de facto relationship” after “married” wherever occurring.

[4] Section 27A (2) (b)

Insert “or relationship” after “marriage”.

[5] Section 27A (4)

Omit the subsection. Insert instead:

- (4) In this section:

de facto partner of a deceased former contributor means, if the deceased contributor was, at the time of his or her death, in a de facto relationship within the meaning of the *Property (Relationships) Act 1984* with a person, that person.

eligible surviving spouse or de facto partner of a deceased former contributor means a person who has or had in his or her marriage or relationship with the deceased former contributor a child, being:

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- (a) a child of the surviving spouse or de facto partner and the deceased former contributor who was, in the opinion of the Board, wholly or substantially dependent on the deceased former contributor at any time during the marriage or relationship, or
 - (b) a child of the deceased former contributor who was conceived before and born alive after the death of the former contributor.

[6] Section 31B Calculation of adjustment percentage

Omit “this section” from section 31B (2) (a).

Insert instead “subsection (1) (b)”.

[7] Section 74

Insert after section 73:

74 Savings and transitional provisions

Schedule 1 has effect.

[8] Schedule 1

Insert before Schedule 2:

Schedule 1 Savings and transitional provisions

(Section 74)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
Superannuation Legislation Amendment (Family Law) Act 2003 (but only to the extent that it amends this Act)
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 5 Amendment of Parliamentary Contributory Superannuation Act 1971 No 53

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

family law superannuation legislation has the same meaning as it has in Part 4A.

[2] Section 3 (3)

Insert after section 3 (2):

(3) Notes included in this Act do not form part of this Act.

[3] Section 6 Payments into and out of the Fund

Insert after section 6 (2):

(3) There is to be paid from the Fund fees payable to the trustees arising under the family law superannuation legislation or Part 4A, including administration costs arising under the family law superannuation legislation or Part 4A.

[4] Part 4A

Insert after Part 4:

Part 4A Provisions relating to family law superannuation legislation

29A Definitions

In this Part:

complying superannuation fund means:

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) the First State Superannuation Fund.

family law superannuation entitlement has the same meaning as it has in section 29C (2) (a).

family law superannuation legislation means Part VIIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

family law superannuation payment means an amount payable under this Part to or in respect of a non-member spouse.

First State Superannuation Fund means the First State Superannuation Fund established under the *First State Superannuation Act 1992*.

flag lifting agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

FTC means the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.

member spouse, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

non-member spouse, in relation to a superannuation interest under this Act, means the spouse who is not the member spouse in relation to that interest.

payment split has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

splitting order has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

spouse of a person means a person who is or was married to that person.

superannuation agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

superannuation interest means an interest that a member or former member or other person has as a member or beneficiary of the superannuation scheme under this Act.

29B Payment of benefits where superannuation interests affected by flagging order or payment split

Nothing in this Act:

- (a) requires the trustees to pay a benefit or to make any other payment under this Act, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents the trustees from paying or reducing a benefit or making any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

29C Payment splits

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation payments to or in respect of non-member spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

Note. The effect of satisfying those requirements is that payments to the member spouse of a benefit under this Act will no longer be liable to be split for the purposes of the family law superannuation legislation.

- (2) A non-member spouse has a family law superannuation entitlement to which this section applies if:
 - (a) the non-member spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of the superannuation interest of a member spouse (a *family law superannuation entitlement*), and
 - (b) the member spouse is, or was the spouse of, a person who has or had a period of service of not less than the period that entitles a member, who is otherwise eligible under this Act, to a pension, and
 - (c) the family law superannuation entitlement has not been paid to the non-member spouse by the member spouse, or waived by the non-member spouse, in accordance with the family law superannuation legislation.

- (3) On written notice by a member spouse or a non-member spouse, or by any other person or court, of a family law superannuation entitlement of a non-member spouse to which this section applies, the trustees must take one of the following actions:
 - (a) pay or release to the non-member spouse an amount of the value of the family law superannuation entitlement (less any costs chargeable by the trustees),
 - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-member spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable by the trustees), to be held for the benefit of the non-member spouse.
- (4) The trustees may take the action set out in subsection (3) (a) only if the member spouse is in receipt of a pension under this Act or the non-member spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle a member to payment of a benefit if the Fund were a complying superannuation fund.
- (5) The trustees must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if:
 - (a) the payment is not payable under subsection (3) (a), and
 - (b) a non-member spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.
- (6) For the purposes of this section, the value of a family law superannuation entitlement or family law superannuation payment of a non-member spouse is to be determined by the trustees in accordance with any applicable provisions of the regulations and the family law superannuation legislation.
- (7) The trustees must not pay a family law superannuation payment to or in respect of a non-member spouse under this section if the value of the payment that is or would be payable to or in respect of the non-member spouse at that time (taking into account any prior liability to pay a family law superannuation payment) is greater than the value of the member spouse's superannuation interest (as calculated in accordance with the regulations) at that time.

- (8) This section does not apply to or in respect of a pension while payment of the pension is suspended under this Act.

29D Reduction of benefits of member spouses

- (1) The trustees may reduce the amount of any benefit payable under this Act to or in respect of a member spouse (or a spouse or de facto partner of a member spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-member spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) A pension may be reduced under this section even though payment of the pension first commenced before the payment of the amount to or in respect of the non-member spouse.
- (4) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

29E Regulations

Regulations may be made for or with respect to the following matters:

- (a) elections by non-member spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom a family law superannuation payment may be paid,
- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the member spouse's superannuation interest under this Act before the payment is paid,
- (d) the payment of fees for or with respect to family law superannuation payments,
- (e) notice of family law superannuation entitlements and payment splits,
- (f) the periods for payment of family law superannuation payments,

- (g) the calculation of payments and entitlements for the purposes of the family law superannuation legislation or this Part,
- (h) the calculation of the value of superannuation interests of member spouses for purposes relating to the family law superannuation legislation or this Part,
- (i) the accrued benefit multiple for member spouses, or a class of member spouses, for the purposes of the family law superannuation legislation,
- (j) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of member spouses, or spouses or de facto partners of member spouses, as a consequence of payments under the family law superannuation legislation or this Part,
- (k) without limiting paragraph (j), the commutation of pensions or parts of pensions for the purposes of the reduction of benefits as a consequence of payments under the family law superannuation legislation or this Part.

[5] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Family Law)
Act 2003* (but only to the extent that it amends this Act)

Schedule 6 Amendment of Police Association Employees (Superannuation) Act 1969 No 33

(Section 3)

[1] Section 3A

Insert after section 3:

3A Provisions relating to family law superannuation legislation

- (1) Part 4A of the *Police Regulation (Superannuation) Act 1906* and any regulations made under that Part apply, with any necessary modifications, to or in respect of a prescribed person or any other person receiving a benefit under this Act in the same way as they apply to or in respect of a contributor spouse within the meaning of that Part.
- (2) For the purposes of this section, the following provisions have effect:
 - (a) a reference to a non-contributor spouse in that Part or those regulations includes a reference to a spouse (within the meaning of that Part) of a prescribed person or other person receiving a benefit under this Act,
 - (b) a reference to a superannuation interest of a contributor spouse in that Part or those regulations includes a reference to a superannuation interest of a person arising under this Act,
 - (c) a reference to a condition for payment or release of a benefit in that Part or those regulations includes a reference to a condition for payment or release of a benefit that is applicable under this Act,
 - (d) a reference in that Act to administration costs or fees arising under that Part in relation to a contributor spouse includes a reference to costs or fees arising in relation to a person to whom that Part applies because of this section.

[2] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Family Law)
Act 2003* (but only to the extent that it amends this Act)

**Schedule 7 Amendment of Police Regulation
(Superannuation) Act 1906 No 28**

(Section 3)

[1] Section 1 Name of Act, commencement and definitions

Insert in alphabetical order in section 1 (2):

family law superannuation legislation has the same meaning as it has in Part 4A.

family law superannuation payment has the same meaning as it has in Part 4A.

[2] Section 1 (7)

Insert after section 1 (6):

(7) Notes included in this Act do not form part of this Act.

[3] Section 3 Police Superannuation Fund

Insert after section 3 (2) (c):

(c1) any fees paid to STC arising under the family law superannuation legislation or Part 4A, and

[4] Section 3 (3) (c1)

Insert after section 3 (3) (c):

(c1) any administration costs and other amounts payable by STC and arising under the family law superannuation legislation or Part 4A, and

[5] **Part 4A**

Insert after Part 4:

Part 4A Provisions relating to family law superannuation legislation

14N Definitions

In this Part:

complying superannuation fund means:

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) the First State Superannuation Fund.

contributor spouse, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

family law superannuation entitlement has the same meaning as it has in section 14P (2) (a).

family law superannuation legislation means Part VIIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

family law superannuation payment means an amount payable under this Part to or in respect of a non-contributor spouse.

flag lifting agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

non-contributor spouse, in relation to a superannuation interest under this Act, means the spouse who is not the contributor spouse in relation to that interest.

payment split has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

splitting order has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

spouse of a person means a person who is or was married to that person.

superannuation agreement has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

superannuation interest means an interest that a contributor, former contributor or other person has as a contributor to or beneficiary of the superannuation scheme under this Act.

14O Payment of benefits where superannuation interests affected by flagging order or payment split

Nothing in this Act:

- (a) requires STC to pay a benefit or to make any other payment under this Act, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents STC from paying or reducing a benefit or making any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

14P Payment splits

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation payments to or in respect of non-contributor spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

Note. The effect of satisfying those requirements is that payments to the contributor spouse of a benefit under this Act will no longer be liable to be split for the purposes of the family law superannuation legislation.

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- (2) A non-contributor spouse has a family law superannuation entitlement to which this section applies if:
- (a) the non-contributor spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of the superannuation interest of a contributor spouse (a *family law superannuation entitlement*), and
 - (b) the family law superannuation entitlement has not been paid to the non-contributor spouse by the contributor spouse, or waived by the non-contributor spouse, in accordance with the family law superannuation legislation.
- (3) On written notice by a contributor spouse or a non-contributor spouse, or by any other person or court, of a family law superannuation entitlement of a non-contributor spouse to which this section applies, STC must take one of the following actions:
- (a) pay or release to the non-contributor spouse an amount of the value of the family law superannuation entitlement (less any costs chargeable by STC),
 - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-contributor spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable by STC), to be held for the benefit of the non-contributor spouse.
- (4) STC may take the action set out in subsection (3) (a) only if the contributor spouse is in receipt of a pension under this Act or the non-contributor spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle a contributor to payment of a benefit if the Fund were a complying superannuation fund.
- (5) STC must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if:
- (a) the payment is not payable under subsection (3) (a), and
 - (b) a non-contributor spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.

- (6) For the purposes of this section, the value of a family law superannuation entitlement or family law superannuation payment of a non-contributor spouse is to be determined by STC in accordance with any applicable provisions of the regulations and the family law superannuation legislation.
- (7) STC must not pay a family law superannuation payment to or in respect of a non-contributor spouse under this section if the value of the payment that is or would be payable to or in respect of the non-contributor spouse at that time (taking into account any prior liability to pay a family law superannuation payment) is greater than the value of the contributor spouse's superannuation interest (as calculated in accordance with the regulations) at that time.

14Q Reduction of benefits of contributor spouses

- (1) STC may reduce the amount of any benefit payable under this Act to or in respect of a contributor spouse (or a spouse or de facto partner of a contributor spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-contributor spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) A pension may be reduced under this section even though payment of the pension first commenced before the payment of the amount to or in respect of the non-contributor spouse.
- (4) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

14R Regulations

Regulations may be made for or with respect to the following matters:

- (a) elections by non-contributor spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom a family law superannuation payment may be paid,

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- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the contributor spouse's superannuation interest under this Act before the payment is paid,
 - (d) the payment of fees for or with respect to family law superannuation payments,
 - (e) notice of family law superannuation entitlements and payment splits,
 - (f) the periods for payment of family law superannuation payments,
 - (g) the calculation of payments and entitlements for the purposes of the family law superannuation legislation or this Part,
 - (h) the calculation of the value of superannuation interests of contributor spouses for the purposes of the family law superannuation legislation or this Part,
 - (i) the accrued benefit multiple for contributor spouses, or a class of contributor spouses, for the purposes of the family law superannuation legislation,
 - (j) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of contributor spouses, or spouses or de facto partners of contributor spouses, as a consequence of payments under the family law superannuation legislation or this Part,
 - (k) without limiting paragraph (j), the commutation of pensions or parts of pensions for the purposes of the reduction of benefits as a consequence of payments under the family law superannuation legislation or this Part.

[6] Section 18 Benefit payable not to include fraction of a cent

Insert "or family law superannuation payment" after "benefit".

[7] Section 18A Payment to person other than beneficiary

Insert "or family law superannuation payment" after "gratuity" wherever occurring.

Superannuation Legislation Amendment (Family Law) Act 2003 No 77
Schedule 7 Amendment of Police Regulation (Superannuation) Act 1906 No 28

[8] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Family Law)
Act 2003* (but only to the extent that it amends this Act)

Schedule 8 Amendment of Public Authorities Superannuation Act 1985 No 41

(Section 3)

[1] Schedule 5 Repeal, savings and transitional provisions

Omit “or the *Public Authorities Superannuation (Amendment) Act 1985*.” from clause 11 (1).

Insert instead:

and the following Acts:

Public Authorities Superannuation (Amendment) Act 1985

Superannuation Legislation Amendment (Family Law) Act 2003 (but only to the extent that it amends this Act)

[2] Schedule 6 Transitional provisions—Local Government Pension Fund

Insert in alphabetical order in clause 1 (1):

de facto partner of a deceased pensioner means, if the deceased pensioner was, at the time of his or her death, in a de facto relationship within the meaning of the *Property (Relationships) Act 1984* with a person, that person.

[3] Schedule 6, clause 8 Choice of benefit—transferred contributor

Insert after clause 8 (3):

- (4) If a pensioner elected to take the benefit provided by subclauses (2) and (3), the benefit is taken to extend to the de facto partner of a deceased pensioner who dies on or after the commencement of this subclause.

[4] Schedule 6, clause 11 Pensions in respect of children and orphans

Insert “or de facto partner” after “spouse” where firstly and secondly occurring in the definition of *notional pension* in clause 11 (1).

[5] Schedule 6, clause 13 Restriction on automatic adjustment of pension

Insert “or de facto partner” after “spouse” in clause 13 (4).

[6] Schedule 7 Transitional provisions—New South Wales Retirement Fund

Insert in alphabetical order in clause 1 (1):

de facto partner of a deceased pensioner means, if the deceased pensioner was, at the time of his or her death, in a de facto relationship within the meaning of the *Property (Relationships) Act 1984* with a person, that person.

[7] Schedule 7, clause 8 Choice of benefit—transferred contributor

Insert after clause 8 (4):

- (5) If a pensioner elected to take the benefit provided by subclause (3), the benefit is taken to extend to the de facto partner of a deceased pensioner who dies on or after the commencement of this subclause.

Schedule 9 Amendment of Public Authorities Superannuation (Transport Retirement Fund Closure) (Savings and Transitional) Regulation 1986

(Section 3)

Clause 11 Choice of benefit—transferred contributor

Insert after clause 11 (4):

- (5) If a pensioner elected to take the benefit provided by subclause (3), the benefit is taken to extend to the *de facto* partner of a deceased pensioner who dies on or after the commencement of this subclause.
- (6) In this clause:
de facto partner of a deceased pensioner means, if the deceased pensioner was, at the time of his or her death, in a *de facto* relationship within the meaning of the *Property (Relationships) Act 1984* with a person, that person.

Schedule 10 Amendment of State Authorities Non-contributory Superannuation Act 1987 No 212

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

family law superannuation legislation has the same meaning as it has in Part 4D.

family law superannuation payment has the same meaning as it has in Part 4D.

FTC means the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.

non-employee spouse has the same meaning as it has in Part 4D.

[2] Section 3 (4)

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[3] Section 9 Funds etc

Insert after section 9 (2) (c):

, and

- (d) any fees paid to STC arising under the family law superannuation legislation or Part 4D.

[4] Section 9 (3) (a)

Insert “, including administration costs arising under the family law superannuation legislation or Part 4D” after “STC” where secondly occurring.

[5] Section 9 (3) (c1)

Insert after section 9 (3) (c):

- (c1) other amounts payable by STC and arising under the family law superannuation legislation or Part 4D, and

[6] Section 10 Reserves for employers

Insert after section 10 (4) (b):

, and

- (c) the whole or part (as determined by STC) of an amount arising under the family law superannuation legislation or Part 4D that is paid to, or in respect of, a spouse or former spouse of an employee or former employee who, immediately before the payment, was an employee or former employee of the employer or an employer to whom the reserve relates.

[7] Part 4D

Insert after Part 4C:

Part 4D Provisions relating to family law superannuation legislation

27AH Definitions

In this Part:

complying superannuation fund means:

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
(b) the First State Superannuation Fund.

employee spouse, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

family law superannuation entitlement has the same meaning as it has in section 27AJ (2) (a).

family law superannuation legislation means Part VIIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

family law superannuation payment means an amount payable under this Part to or in respect of a non-employee spouse.

flag lifting agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

non-employee spouse, in relation to a superannuation interest under this Act, means the spouse who is not the employee spouse in relation to that interest.

payment split has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

splitting order has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

spouse of a person means a person who is or was married to that person.

superannuation agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

superannuation interest means an interest that an employee or former employee has as a member or beneficiary of the superannuation scheme under this Act.

27AI Payment of benefits where superannuation interests affected by flagging order or payment split

Nothing in this Act:

- (a) requires STC to pay a benefit or to make any other payment under this Act, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents STC from paying or reducing a benefit or making any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

27AJ Payment splits

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation payments to or in respect of non-employee spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

Note. The effect of satisfying those requirements is that payments to the employee spouse of a benefit under this Act will no longer be liable to be split for the purposes of the family law superannuation legislation.

- (2) A non-employee spouse has a family law superannuation entitlement to which this section applies if:
- (a) the non-employee spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of the superannuation interest of an employee spouse (a *family law superannuation entitlement*), and
 - (b) the family law superannuation entitlement has not been paid to the non-employee spouse by the employee spouse, or waived by the non-employee spouse, in accordance with the family law superannuation legislation.
- (3) On written notice by an employee spouse or a non-employee spouse, or by any other person or court, of a family law superannuation entitlement of a non-employee spouse to which this section applies, STC must take one of the following actions:
- (a) pay or release to the non-employee spouse an amount of the value of the family law superannuation entitlement (less any costs chargeable by STC),
 - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-employee spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable by STC), to be held for the benefit of the non-employee spouse.

- (4) STC may take the action set out in subsection (3) (a) only if the non-employee spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle an employee to payment of a benefit under this Act if the Fund were a complying superannuation fund.
- (5) STC must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if:
 - (a) the payment is not payable under subsection (3) (a), and
 - (b) a non-employee spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.
- (6) For the purposes of this section, the value of a family law superannuation entitlement or a family law superannuation payment of a non-employee spouse is to be determined by STC in accordance with any applicable provisions of the regulations and the family law superannuation legislation.
- (7) STC must not pay a family law superannuation payment to or in respect of a non-employee spouse under this section if the value of the payment that is or would be payable to or in respect of the non-employee spouse at that time (taking into account any prior liability to pay a family law superannuation payment) is greater than the value of the employee spouse's superannuation interest (as calculated in accordance with the regulations) at that time.

27AK Reduction of benefits of employee spouses

- (1) STC may reduce the amount of any benefit payable under this Act to or in respect of an employee spouse (or a spouse or de facto partner of an employee spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-employee spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

27AL Regulations

Regulations may be made for or with respect to the following matters:

- (a) elections by non-employee spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom family law superannuation payments may be paid,
- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the employee spouse's superannuation interest under this Act before the payment is paid,
- (d) the payment of fees for or with respect to family law superannuation payments,
- (e) notice of family law superannuation entitlements and payment splits,
- (f) the periods for payment of family law superannuation payments,
- (g) the calculation of payments and entitlements for the purposes of the family law superannuation legislation or this Part,
- (h) the calculation of the value of superannuation interests of employee spouses for the purposes of the family law superannuation legislation or this Part,
- (i) the accrued benefit multiple for employee spouses, or a class of employee spouses, for the purposes of the family law superannuation legislation,
- (j) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of employee spouses, or spouses or de facto partners of employee spouses, as a consequence of payments under the family law superannuation legislation or this Part.

[8] Section 31 Payment without grant of probate etc

Insert "or a non-employee spouse" after "former employee" wherever occurring in section 31 (1) and (3).

Superannuation Legislation Amendment (Family Law) Act 2003 No 77

Schedule 10 Amendment of State Authorities Non-contributory Superannuation Act 1987
No 212

[9] Section 31

Insert “or family law superannuation payment” after “benefit” wherever occurring.

[10] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Family Law)
Act 2003* (but only to the extent that it amends this Act)

Schedule 11 Amendment of State Authorities Superannuation Act 1987 No 211

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

family law superannuation legislation has the same meaning as it has in Part 5AA.

family law superannuation payment has the same meaning as it has in Part 5AA.

FTC means the FSS Trustee Corporation established under the *Superannuation Administration Act 1996*.

non-contributor spouse has the same meaning as it has in Part 5AA.

[2] Section 3 (5)

Insert after section 3 (4):

(5) Notes included in this Act do not form part of this Act.

[3] Section 11 Establishment of the Fund

Insert after section 11 (3) (c):

(c1) any fees paid to STC arising under the family law superannuation legislation or Part 5AA, and

[4] Section 11 (4) (a)

Insert “and administration costs arising under the family law superannuation legislation or Part 5AA” after “1996”.

[5] Section 11 (4) (c1)

Insert after section 11 (4) (c):

(c1) other amounts payable by STC and arising under the family law superannuation legislation or Part 5AA, and

[6] Section 12 Contributors' accounts

Insert after section 12 (3) (c):

, and

- (d) the whole or part (as determined by STC) of an amount that is payable by STC and arises under the family law superannuation legislation or Part 5AA and that is payable to, or in respect of, a spouse or former spouse of the contributor or a person whose superannuation interest (within the meaning of Part 5AA) is derived from the contributor.

[7] Section 14 Reserves for employers

Insert "or under the family law superannuation legislation or Part 5AA" after "1996" in section 14 (4) (b).

[8] Section 14 (4) (c)

Insert after section 14 (4) (b):

, and

- (c) the whole or part (as determined by STC) of an amount that is payable by STC and that arises under the family law superannuation legislation or Part 5AA and that is payable to, or in respect of:
 - (i) a spouse or former spouse of an employee or former employee who, immediately before the payment, was an employee or former employee of the employer or an employer to whom the reserve relates, or
 - (ii) a person whose superannuation interest (within the meaning of Part 5AA) is derived from any such employee or former employee.

[9] Part 5AA

Insert after Part 5:

Part 5AA Provisions relating to family law superannuation legislation

45F Definitions

In this Part:

complying superannuation fund means:

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) the First State Superannuation Fund.

contributor spouse, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

family law superannuation entitlement has the same meaning as it has in section 45I (2) (a).

family law superannuation legislation means Part VIIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

family law superannuation payment means an amount payable under this Part to or in respect of a non-contributor spouse.

flag lifting agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

non-contributor spouse, in relation to a superannuation interest under this Act, means the spouse who is not the contributor spouse in relation to that interest.

payment split has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

splitting order has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

spouse of a person means a person who is or was married to that person.

superannuation agreement has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

superannuation interest means an interest that a contributor, former contributor or other person has as a contributor to or beneficiary of the superannuation scheme under this Act.

45G Application of Part to contributors to, and pensions under, former schemes

- (1) In addition to contributors and former contributors under this Act, this Part applies to the following persons in the same way as it applies to contributors and former contributors under this Act:
 - (a) a transferred contributor or transferred pensioner within the meaning of the *State Authorities Superannuation (Government Railways Superannuation Scheme Transfer) (Savings and Transitional) Regulation 1990*, a former transferred contributor under that Regulation and any other person being paid a pension under that Regulation,
 - (b) a transferred contributor within the meaning of Part 1 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988*, a former transferred contributor under that Regulation and any other person being paid a pension under that Regulation,
 - (c) a person being paid a pension under the *Local Government and Other Authorities (Superannuation) Act 1927*, the *New South Wales Retirement Benefits Act 1972*, the *Public Authorities Superannuation Act 1985*, the *Public Authorities Superannuation (Transport Retirement Fund Closure) (Savings and Transitional) Regulation 1986*, the *State Authorities Superannuation (Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund Transfer) Regulation 2003* or the *Transport Employees Retirement Benefits Act 1967*.

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- (2) A reference in this Part to a superannuation interest under this Act includes, in relation to a person referred to in subsection (1) (a), (b) or (c), a reference to a superannuation interest under an Act or regulation applicable to the person concerned.
 - (3) A reference in this Part to a condition for payment or release of a benefit includes, in relation to a person referred to in subsection (1) (a), (b) or (c), a reference to a condition for payment or release of a benefit under a provision of an Act or regulation applicable to the person concerned.
 - (4) A reference in this Part to a benefit includes a reference to a benefit under an Act or regulation referred to in subsection (1) (a), (b) or (c).

45H Payment of benefits where superannuation interests affected by flagging order or payment split

Nothing in this or any other Act or regulation:

- (a) requires STC to pay a benefit or to make any other payment under this or any other Act or regulation, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents STC from paying or reducing a benefit or making any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

45I Payment splits

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation payments to or in respect of non-contributor spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

Note. The effect of satisfying those requirements is that payments to the contributor spouse of a benefit under this Act will no longer be liable to be split for the purposes of the family law superannuation legislation.

- (2) A non-contributor spouse has a family law superannuation entitlement to which this section applies if:
 - (a) the non-contributor spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of the superannuation interest of a contributor spouse (a *family law superannuation entitlement*), and
 - (b) the family law superannuation entitlement has not been paid to the non-contributor spouse by the contributor spouse, or waived by the non-contributor spouse, in accordance with the family law superannuation legislation.
- (3) On written notice by a contributor spouse or a non-contributor spouse, or by any other person or court, of a family law superannuation entitlement of a non-contributor spouse to which this section applies, STC must take one of the following actions:
 - (a) pay or release to the non-contributor spouse an amount of the value of the family law superannuation entitlement (less any costs chargeable by STC),
 - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-contributor spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable by STC), to be held for the benefit of the non-contributor spouse.
- (4) STC may take the action set out in subsection (3) (a) only if the contributor spouse is in receipt of a pension or the non-contributor spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle a contributor to payment of a benefit if the Fund were a complying superannuation fund.
- (5) STC must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if:
 - (a) the payment is not payable under subsection (3) (a), and
 - (b) a non-contributor spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.

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- (6) For the purposes of this section, the value of a family law superannuation entitlement or family law superannuation payment of a non-contributor spouse is to be determined by STC in accordance with any applicable provisions of the regulations and the family law superannuation legislation.
 - (7) STC must not pay a family law superannuation payment to or in respect of a non-contributor spouse under this section if the value of the payment that is or would be payable to or in respect of the non-contributor spouse at that time (taking into account any prior liability to pay a family law superannuation payment) is greater than the value of the contributor spouse's superannuation interest (as calculated in accordance with the regulations) at that time.

45J Reduction of benefits of contributor spouses

- (1) STC may reduce the amount of any benefit payable under this Act to or in respect of a contributor spouse (or a spouse or de facto partner of a contributor spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-contributor spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) A pension may be reduced under this section even though payment of the pension first commenced before the payment of the amount to or in respect of the non-contributor spouse.
- (4) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

45K Regulations

Regulations may be made for or with respect to the following matters:

- (a) elections by non-contributor spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom a family law superannuation payment may be paid,

- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the contributor spouse's superannuation interest under this Act before the payment is paid,
- (d) the payment of fees for or with respect to family law superannuation payments,
- (e) notice of family law superannuation entitlements and payment splits,
- (f) the periods for payment of family law superannuation payments,
- (g) the calculation of payments and entitlements for the purposes of the family law superannuation legislation or this Part,
- (h) the calculation of the value of superannuation interests of contributor spouses for the purposes relating to the family law superannuation legislation or this Part,
- (i) the accrued benefit multiple for contributor spouses, or a class of contributor spouses, for the purposes of the family law superannuation legislation,
- (j) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of contributor spouses, or spouses or de facto partners of contributor spouses, as a consequence of payments under the family law superannuation legislation or this Part,
- (k) without limiting paragraph (j), the commutation of pensions or parts of pensions for the purposes of the reduction of benefits as a consequence of payments under the family law superannuation legislation or this Part.

[10] Section 51 Payment without grant of probate etc

Insert "or family law superannuation payment" after "benefit" wherever occurring.

[11] Section 51 (3)

Insert "or a non-contributor spouse" after "former contributor".

Superannuation Legislation Amendment (Family Law) Act 2003 No 77

Amendment of State Authorities Superannuation Act 1987 No 211

Schedule 11

[12] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Family Law)
Act 2003* (but only to the extent that it amends this Act)

Schedule 12 Amendment of Superannuation Act 1916 No 28

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Family law superannuation legislation has the same meaning as it has in Part 4A.

Non-contributor spouse has the same meaning as it has in Part 4A.

[2] Section 3 (14)

Insert after section 3 (13):

(14) Notes included in this Act do not form part of this Act.

[3] Section 4 Reconstitution of the Fund

Insert after section 4 (3) (c):

(c1) fees paid to STC arising under the family law superannuation legislation or Part 4A, and

[4] Section 4 (4) (a)

Insert “, including administration costs arising under the family law superannuation legislation or Part 4A” after “Fund”.

[5] Section 4 (4) (c1)

Insert after section 4 (4) (c):

(c1) amounts payable by STC and arising under the family law superannuation legislation or Part 4A, and

[6] Section 6 Contributors' reserve

Insert after section 6 (2):

(3) STC must ensure that there is debited to the contributors' reserve that portion of any amount arising under the family law superannuation legislation or Part 4A that is payable to or in respect of a non-contributor spouse from the contributors' reserve in accordance with section 33B (2A).

[7] Section 7 Employer reserves

Insert after section 7 (1):

- (1A) STC must ensure that there is credited to the appropriate employer reserve any fees paid to STC arising under the family law superannuation legislation or Part 4A.

[8] Section 7 (2) (b)

Insert “or the family law superannuation legislation or Part 4A” after “1996”.

[9] Section 7 (2) (c1)

Insert after section 7 (2) (c):

- (c1) the portion of any amount under the family law superannuation legislation or Part 4A that is payable to or in respect of a non-contributor spouse from the employer reserve in accordance with section 33B (2A), and

[10] Section 33B STC to apportion benefits and other payments between the contributors’ reserve and the appropriate employer reserve

Insert after section 33B (2):

- (2A) When an amount under the family law superannuation legislation or Part 4A becomes payable to or in respect of a non-contributor spouse, STC must, in accordance with the regulations, determine the portion of the payment that is payable from the contributors’ reserve and the portion that is payable from the appropriate employer reserve.

[11] Part 4A

Insert after Part 4:

Part 4A Provisions relating to family law superannuation legislation

61W Definitions

In this Part:

complying superannuation fund means:

- (a) a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, or
- (b) the First State Superannuation Fund.

contributor spouse, in relation to a superannuation interest under this Act, means the spouse who has the superannuation interest.

family law superannuation entitlement has the same meaning as it has in section 61WB (2) (a).

family law superannuation legislation means Part VIIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

family law superannuation payment means an amount payable under this Part to or in respect of a non-contributor spouse.

flag lifting agreement has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

non-contributor spouse, in relation to a superannuation interest under this Act, means the spouse who is not the contributor spouse in relation to that interest.

payment split has the same meaning as it has in Part VIIIIB of the *Family Law Act 1975* of the Commonwealth.

RSA means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth.

splitting order has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

spouse of a person means a person who is or was married to that person.

superannuation agreement has the same meaning as it has in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

superannuation interest means an interest that a contributor or former contributor or other person has as a contributor to or beneficiary of the superannuation scheme under this Act.

61WA Payment of benefits where superannuation interests affected by flagging order or payment split

Nothing in this Act:

- (a) requires STC to pay a benefit or to make any other payment under this Act, to the extent that any such payment would contravene provisions of the family law superannuation legislation or any order or agreement made under that legislation, or
- (b) prevents STC from paying or reducing a benefit or making any other payment, to the extent that the payment or reduction is required to be made, or results from a requirement, under the family law superannuation legislation or any order or agreement made under that legislation.

61WB Payment splits

- (1) The object of this section is to facilitate arrangements for payment splits under the family law superannuation legislation and to provide for family law superannuation payments to or in respect of non-contributor spouses for the purposes of satisfying the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

Note. The effect of satisfying those requirements is that payments to the contributor spouse of a benefit under this Act will no longer be liable to be split for the purposes of the family law superannuation legislation.

- (2) A non-contributor spouse has a family law superannuation entitlement to which this section applies if:
 - (a) the non-contributor spouse has an entitlement, that is operative, to be paid an amount under a superannuation agreement, flag lifting agreement or splitting order in respect of the superannuation interest of a contributor spouse (a *family law superannuation entitlement*), and
 - (b) the family law superannuation entitlement has not been paid to the non-contributor spouse by the contributor spouse, or waived by the non-contributor spouse, in accordance with the family law superannuation legislation.
- (3) On written notice by a contributor spouse or a non-contributor spouse, or by any other person or court, of a family law superannuation entitlement of a non-contributor spouse to which this section applies, STC must take one of the following actions:
 - (a) pay or release to the non-contributor spouse an amount of the value of the family law superannuation entitlement (less any costs chargeable by STC),
 - (b) transfer or rollover to a complying superannuation fund or an RSA nominated by the non-contributor spouse an amount, of the value of the family law superannuation entitlement (less any costs chargeable by STC), to be held for the benefit of the non-contributor spouse.
- (4) STC may take the action set out in subsection (3) (a) only if the contributor spouse is in receipt of a pension under this Act or the non-contributor spouse has satisfied a condition for payment or release of a benefit of a kind that would entitle a contributor to payment of a benefit if the Fund were a complying superannuation fund.
- (5) STC must transfer a family law superannuation payment to FTC for crediting to the First State Superannuation Fund if:
 - (a) the payment is not payable under subsection (3) (a), and
 - (b) a non-contributor spouse fails, within the period prescribed by the regulations, to make a nomination for the purposes of subsection (3) (b) or a nominated fund or RSA does not accept the nomination.

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- (6) For the purposes of this section, the value of a family law superannuation entitlement or family law superannuation payment of a non-contributor spouse is to be determined by STC in accordance with any applicable provisions of the regulations and the family law superannuation legislation.
 - (7) STC must not pay a family law superannuation payment to or in respect of a non-contributor spouse under this section if the value of the payment that is or would be payable to or in respect of the non-contributor spouse at that time (taking into account any prior liability to pay a family law superannuation payment) is greater than the value of the contributor spouse's superannuation interest (as calculated in accordance with the regulations) at that time.

61WC Reduction of benefits of contributor spouses

- (1) STC may reduce the amount of any benefit payable under this Act to or in respect of a contributor spouse (or a spouse or de facto partner of a contributor spouse) if a family law superannuation entitlement is paid or payable to or in respect of the non-contributor spouse under the family law superannuation legislation or this Part or the regulations.
- (2) A preserved or deferred benefit may be reduced under this section.
- (3) A pension may be reduced under this section even though payment of the pension first commenced before the payment of the amount to or in respect of the non-contributor spouse.
- (4) The benefit is to be reduced in accordance with the regulations and any applicable provisions of the family law superannuation legislation.

61WD Regulations

Regulations may be made for or with respect to the following matters:

- (a) elections by non-contributor spouses for payment of family law superannuation entitlements,
- (b) the persons or bodies to whom a family law superannuation payment may be paid,

- (c) the composition of payments made for the purposes of the family law superannuation legislation or this Part, having regard to the composition of the contributor spouse's superannuation interest under this Act before the payment is paid,
- (d) the payment of fees for or with respect to family law superannuation payments,
- (e) notice of family law superannuation entitlements and payment splits,
- (f) the periods for payment of family law superannuation payments,
- (g) the calculation of payments and entitlements for the purposes of the family law superannuation legislation or this Part,
- (h) the calculation of the value of superannuation interests of contributor spouses for purposes relating to the family law superannuation legislation or this Part,
- (i) the accrued benefit multiple for contributor spouses, or a class of contributor spouses, for the purposes of the family law superannuation legislation,
- (j) the reduction of benefits (including deferred or preserved benefits) payable to or in respect of contributor spouses, or spouses or de facto partners of contributor spouses, as a consequence of payments under the family law superannuation legislation or this Part,
- (k) without limiting paragraph (j), the commutation of pensions or parts of pensions for the purposes of the reduction of benefits as a consequence of payments under the family law superannuation legislation or this Part.

[12] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Superannuation Legislation Amendment (Family Law)
Act 2003* (but only to the extent that it amends this Act)

Schedule 13 Amendment of Transport Employees Retirement Benefits Act 1967 No 96

(Section 3)

[1] Section 23 Benefit at age 65 years after 10 years service

Insert after section 23 (9):

- (10) If a contributor elected to take the benefit provided by subsection (4) (a) (ii), the benefit is taken to extend to the de facto partner of a deceased pensioner who dies on or after the commencement of this subsection.
- (11) In this section:
de facto partner of a deceased pensioner means, if the deceased pensioner was, at the time of his or her death, in a de facto relationship within the meaning of the *Property (Relationships) Act 1984* with a person, that person.

[2] Section 23A

Insert after section 23:

23A Extension of rights to spouse pensions

- (1) This section applies to a contributor (the *pensioner*) who made an election under section 23 (4) (a) (ii) and who marries or enters into a de facto relationship after becoming entitled to a pension under this Act.
- (2) If a pensioner dies on or after the commencement of this section leaving an eligible widow or de facto partner, there is payable to the eligible widow or de facto partner:
 - (a) if the deceased pensioner and eligible widow or de facto partner had been married or been in a de facto relationship for 3 years or more immediately before the pensioner's death—a pension at the rate of five-eighths of the pension the deceased pensioner was receiving, or entitled to receive, immediately before death, or
 - (b) if the deceased pensioner and eligible widow or de facto partner had been married or been in a de facto relationship for less than 3 years immediately before the pensioner's death—a pension as referred to in

paragraph (a), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

(3) In this section:

eligible widow or de facto partner of a deceased pensioner means a widow or de facto partner who has or had in the marriage or relationship with the deceased pensioner a child, being:

- (a) a child of the widow or de facto partner and the deceased pensioner who was, in the opinion of the Board, wholly or substantially dependent on the deceased pensioner at any time during the marriage or relationship, or
- (b) a child of the deceased pensioner who was conceived before and born alive after the death of the pensioner.

[3] Section 31B Calculation of adjustment percentage

Omit “this section” from section 31B (2) (a).

Insert instead “subsection (1) (b)”.

[4] Schedule 7 Savings and transitional provisions

Insert after clause 1:

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Superannuation Legislation Amendment (Family Law) Act 2003 (but only to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[Second reading speech made in—
Legislative Assembly on 12 November 2003
Legislative Council on 18 November 2003]

BY AUTHORITY