

Superannuation Legislation Amendment (Family Law) Act 2003 No 77

[2003-77]



New South Wales

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Authorisation

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Superannuation Legislation Amendment (Family Law) Act 2003 No 77



New South Wales

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.

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Schedule 1 (Repealed)

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 VIIIB 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 has the same meaning as **Fund** has in the [First State Superannuation Act 1992](#).

flag lifting agreement has the same meaning as it has in Part VIIIB of the [Family Law Act 1975](#) of the Commonwealth.

FTC has the same meaning as in the [First State Superannuation Act 1992](#).

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 VIIIB 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 VIIIB 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 VIIIB 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.
- (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,
- (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)

Schedules 3-13 (Repealed)