

TASMANIA

---

**PUBLIC SECTOR SUPERANNUATION  
(SPLITTING OF SUPERANNUATION  
INTERESTS) BILL 2003**

---

**CONTENTS**

**PART 1 - PRELIMINARY**

1. Short title
2. Commencement

**PART 2 - *GOVERNOR OF TASMANIA ACT 1982*  
AMENDED**

3. Principal Act
4. Section 6BA inserted  
6BA. Family Law (Splitting of superannuation interests)
5. Schedule 1 inserted  
**SCHEDULE 1 - FAMILY LAW (SPLITTING OF  
SUPERANNUATION INTERESTS)**

**PART 3 - *JUDGES' CONTRIBUTORY PENSIONS ACT 1968*  
AMENDED**

6. Principal Act
7. Section 13A inserted  
13A. Family Law (Splitting of superannuation interests)
8. Schedule 1 inserted

**SCHEDULE 1 – FAMILY LAW (SPLITTING OF  
SUPERANNUATION INTERESTS)**

**PART 4 – *RETIREMENT BENEFITS ACT 1993* AMENDED**

- 9. Principal Act
- 10. Section 29 amended (Regulations)
- 11. Section 29F inserted
  - 29F. Validation of certain actions and decisions of Board

**PART 5 – *SOLICITOR-GENERAL ACT 1983* AMENDED**

- 12. Principal Act
- 13. Schedule 1 amended (Pension Rights, &c.)

**PART 6 – *RETIREMENT BENEFITS REGULATIONS 1994*  
AMENDED**

- 14. Principal Regulations
- 15. Regulation 3 amended (Interpretation)
- 16. Regulation 33 amended (Interpretation of Division 3)
- 17. Regulation 60AA amended (Application of Part)
- 18. Regulation 76AA amended (Application of Part)
- 19. Regulation 78 amended (Pension conversion factors)
- 20. Regulation 86 amended (Right of certain pensioners to commute pension to lump sum)
- 21. Part 7B inserted
  - PART 7B – Family Law (Splitting of Superannuation Interests)
  - 88J. Application of Part
  - 88K. Objects of Part
  - 88L. Duty of Board to give effect to splitting instruments under Family Law Act
  - 88M. Accounts for non-member spouse
  - 88N. Commutation of pension on death of non-member spouse
  - 88P. Effect of benefit under splitting instrument
  - 88Q. Fees for administration of this Part
  - 88R. Provision of information by Board

- 22. Regulation 90 amended (Contributions to Fund by the State and prescribed authorities)
- 23. Schedule 3 amended (Calculation of certain pensions in respect of former contributors under repealed Act)

**PART 7 – RETIREMENT BENEFITS (PARLIAMENTARY SUPERANNUATION) REGULATIONS 2002 AMENDED**

- 24. Principal Regulations
- 25. Regulation 19 amended (Application of Division 4)
- 26. Regulation 57 substituted
  - 57. Application of Division 4
- 27. Part 4A inserted
  - PART 4A – Family Law (Splitting of Superannuation Interests)
  - 77A. Interpretation of Part
  - 77B. Application of Part
  - 77C. Objects of Part
  - 77D. Duty of Board to give effect to splitting instruments under Family Law Act
  - 77E. Commutation of pension on death of non-member spouse
  - 77F. Effect of benefit under splitting instrument
  - 77G. Fees for administration of this Part
  - 77H. Provision of information by Board



**PUBLIC SECTOR SUPERANNUATION  
(SPLITTING OF SUPERANNUATION  
INTERESTS) BILL 2003**

*(Brought in by the Minister for Education, the Honourable  
Paula Catherine Wriedt)*

**A BILL FOR**

**An Act to amend the *Retirement Benefits Act 1993*  
and certain other Acts and regulations to carry into  
effect laws of the Commonwealth relating to the  
splitting of superannuation entitlements under the  
law of Tasmania**

Be it enacted by His Excellency the Governor of Tasmania,  
by and with the advice and consent of the Legislative  
Council and House of Assembly, in Parliament assembled,  
as follows:

**PART 1 – PRELIMINARY**

**Short title**

**1.** This Act may be cited as the *Public Sector Superannuation (Splitting of Superannuation Interests) Act 2003*.

**Commencement**

**2.** This Act commences on the day on which this Act receives the Royal Assent.

**PART 2 – GOVERNOR OF TASMANIA ACT 1982  
AMENDED**

**Principal Act**

**3.** In this Part, the *Governor of Tasmania Act 1982\** is referred to as the Principal Act.

**Section 6BA inserted**

**4.** After section 6B of the Principal Act, the following section is inserted:

**Family Law (Splitting of superannuation interests)**

**6BA. (1)** A pension payable under this Act –

- (a) is to be reduced to take into account any commutation of the pension under section 6A or 6B; and
- (b) is subject to Schedule 1 which carries into effect the provisions of the *Family Law Act 1975* of the Commonwealth relating to the splitting of superannuation interests, as defined in Part VIIIB of that Act.

**(2)** A lump sum payment under this Act is subject to Schedule 1.

---

\*No. 26 of 1982

**Schedule 1 inserted**

5. After section 12 of the Principal Act, the following Schedule is inserted:

**SCHEDULE 1 – FAMILY LAW (SPLITTING OF  
SUPERANNUATION INTERESTS)**

Section 6BA(1)(b) and (2)

**Interpretation**

1. (1) In this Schedule –

“**Family Law Act**” means the *Family Law Act 1975* of the Commonwealth;

“**splitting instrument**” means a superannuation agreement, a flagging order, a flag lifting agreement or a splitting order, as those terms are respectively defined in Part VIIIB of the Family Law Act.

(2) All expressions used in this Schedule that are defined in the Family Law Act have the meanings assigned to them in that Act.

**Application of Schedule**

2. This Schedule applies to –

- (a) any benefit under this Act that is a superannuation interest; and
- (b) any splitting instrument that has an operative time on or after 28 December 2002.

**Objects of Schedule**

**3. (1)** The objects of this Schedule are to carry into effect the provisions of the Family Law Act relating to the splitting of superannuation interests.

**(2)** If a provision of this Schedule is inconsistent with a provision of the Family Law Act, the latter provision prevails to the extent of the inconsistency.

**Duty of Minister to give effect to splitting instruments under Family Law Act**

**4. (1)** Where a splitting instrument affects an entitlement to a benefit of a member spouse under this Act, the Minister must give effect to that instrument in paying or determining that benefit.

**(2)** The Minister is not to make a payment to a non-member spouse under this Act before a splittable payment is payable to, or in respect of, the relevant member spouse.

**Commutation of pension on death of non-member spouse**

**5. (1)** Where a share of a pension is payable to a non-member spouse under this Schedule, the Minister is to commute that share to a lump sum if that non-member spouse predeceases the member spouse in respect of whom the pension is being paid.

**(2)** For the purposes of subclause (1), the commutation factors are to be determined by the Minister on the advice of the Actuary.

(3) A share of a pension paid or payable to a non-member spouse under this Schedule does not revert to the widow or widower of that non-member spouse on the death of that non-member spouse.

(4) A lump sum payment calculated under subclause (1) is to be paid to the legal personal representative of the non-member spouse and is to be made in accordance with Part VIIIB of the Family Law Act.

(5) A share of a pension payable to a non-member spouse under this Schedule ceases –

- (a) on the death of the relevant member spouse; or
- (b) where a reversionary pension is payable in respect of a member spouse, on the cessation of that reversionary pension.

### **Effect of benefit under splitting instrument**

6. If a member spouse dies and is survived by a non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument in respect of the superannuation interest of the member spouse, that non-member spouse is not entitled to a benefit under this Act in respect of the deceased member spouse except in accordance with that instrument.

### **Fees for administration of Schedule**

7. For the purposes of administering this Schedule, the Minister may charge reasonable fees in accordance with the Family Law Act.

**s. 5**

No. *Public Sector Superannuation (Splitting  
of Superannuation Interests)* 2003

**Provision of information by Minister**

**8.** Where an eligible person, within the meaning of section 90MZB of the Family Law Act, has applied to the Minister for information in accordance with that section about the superannuation interest of a member spouse, the Minister must comply with the requirements of that Act as if he or she were the trustee of a superannuation fund.

**PART 3 – JUDGES’ CONTRIBUTORY PENSIONS  
ACT 1968 AMENDED**

**Principal Act**

**6.** In this Part, the *Judges’ Contributory Pensions Act 1968\** is referred to as the Principal Act.

**Section 13A inserted**

**7.** After section 13 of the Principal Act, the following section is inserted:

**Family Law (Splitting of superannuation interests)**

**13A. (1)** A pension payable under this Act –

- (a) is to be reduced to take into account any commutation of the pension under section 10A or 10B; and
- (b) is subject to Schedule 1 which carries into effect the provisions of the *Family Law Act 1975* of the Commonwealth relating to the splitting of superannuation interests, as defined in Part VIIIB of that Act.

**(2)** A lump sum payment under this Act is subject to Schedule 1.

---

\*No. 73 of 1968

**Schedule 1 inserted**

**8.** After section 15 of the Principal Act, the following Schedule is inserted:

**SCHEDULE 1 – FAMILY LAW (SPLITTING OF  
SUPERANNUATION INTERESTS)**

Section 13A(1)(b) and (2)

**Interpretation**

**1. (1)** In this Schedule –

**“Family Law Act”** means the *Family Law Act 1975* of the Commonwealth;

**“splitting instrument”** means a superannuation agreement, a flagging order, a flag lifting agreement or a splitting order, as those terms are respectively defined in Part VIIIB of the Family Law Act.

**(2)** All expressions used in this Schedule that are defined in the Family Law Act have the meanings assigned to them in that Act.

**Application of this Schedule**

**2.** This Schedule applies to –

- (a) any benefit under this Act that is a superannuation interest; and
- (b) any splitting instrument that has an operative time on or after 28 December 2002.

### **Objects of this Schedule**

**3. (1)** The objects of this Schedule are to carry into effect the provisions of the Family Law Act relating to the splitting of superannuation interests.

**(2)** If a provision of this Schedule is inconsistent with a provision of the Family Law Act, the latter provision prevails to the extent of the inconsistency.

### **Duty of Minister to give effect to splitting instruments under Family Law Act**

**4. (1)** Where a splitting instrument affects an entitlement to a benefit of a member spouse under this Act, the Minister must give effect to that instrument in paying or determining that benefit.

**(2)** The Minister is not to make a payment to a non-member spouse under this Act before a splittable payment is payable to, or in respect of, the relevant member spouse.

### **Commutation of pension on death of non-member spouse**

**5. (1)** Where a share of a pension is payable to a non-member spouse under this Schedule, the Minister is to commute that share to a lump sum if that non-member spouse predeceases the member spouse in respect of whom the pension is being paid.

**(2)** For the purposes of subclause (1), the commutation factors are to be determined by the Minister on the advice of the Actuary.

(3) A share of a pension paid or payable to a non-member spouse under this Schedule does not revert to the widow or widower of that non-member spouse on the death of that non-member spouse.

(4) A lump sum payment calculated under subclause (1) is to be paid to the legal personal representative of the non-member spouse and is to be made in accordance with Part VIIIB of the Family Law Act.

(5) A share of a pension payable to a non-member spouse under this Schedule ceases –

- (a) on the death of the relevant member spouse; or
- (b) where a reversionary pension is payable in respect of a member spouse, on the cessation of that reversionary pension.

### **Effect of benefit under splitting instrument**

6. If a member spouse dies and is survived by a non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument in respect of the superannuation interest of the member spouse, that non-member spouse is not entitled to a benefit under this Act in respect of the deceased member spouse except in accordance with that instrument.

### **Fees for administration of Schedule**

7. For the purposes of administering this Schedule, the Minister may charge reasonable fees in accordance with the Family Law Act.

**Provision of information by Minister**

**8.** Where an eligible person, within the meaning of section 90MZB of the Family Law Act, has applied to the Minister for information in accordance with that section about the superannuation interest of a member spouse, the Minister must comply with the requirements of that Act as if he or she were the trustee of a superannuation fund.

**PART 4 – RETIREMENT BENEFITS ACT 1993**  
**AMENDED**

**Principal Act**

**9.** In this Part, the *Retirement Benefits Act 1993*\* is referred to as the Principal Act.

**Section 29 amended (Regulations)**

**10.** Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1A)(h) “Court.” and substituting “Court; and”;
- (b) by inserting the following paragraph after paragraph (h) in subsection (1A):
  - (i) for fees payable in respect of the administration of this Act.
- (c) by omitting subsection (5A) and substituting the following subsections:

**(5A)** The regulations may provide for –

- (a) any matter necessary or desirable for carrying into effect any law of the State or the Commonwealth relating to the splitting of superannuation interests on the breakdown of a relationship; or
- (b) without limitation, abrogating, reducing, assigning or withholding a person’s entitlement to a lump

---

\*No. 103 of 1993

sum or pension benefit in order to satisfy the requirements of any such law or of any other relevant law of the Commonwealth; or

- (c) the imposition of fees payable to the Board for any such purpose as provided for by the law of the Commonwealth –

and any such regulation may take effect on the day on which that law of the State or the Commonwealth takes effect or on any later day.

**(5B)** The regulations may also contain provisions for abrogating, reducing, assigning or withholding a person's entitlement to a lump sum or pension benefit in a case where the Board is satisfied that a contributor, former contributor, former eligible employee or pensioner was, at the date of his or her death, living apart from his or her spouse and not providing significant financial support for the spouse.

## **Section 29F inserted**

**11.** After section 29E of the Principal Act, the following section is inserted in Part 4:

### **Validation of certain actions and decisions of Board**

**29F.** Where the Board has taken any action or made any decision since 28 December 2002 for the purpose of carrying into effect the provisions of Part VIIIB of the *Family Law Act 1975*, that action or decision is taken to be as valid and effectual as if the *Public*

**s. 11**

No.      *Public Sector Superannuation (Splitting  
of Superannuation Interests)*      2003

*Sector Superannuation (Splitting of Superannuation  
Interests) Act 2003* had commenced on that date.

**PART 5 – SOLICITOR-GENERAL ACT 1983  
AMENDED**

**Principal Act**

**12.** In this Part, the *Solicitor-General Act 1983*<sup>\*</sup> is referred to as the Principal Act.

**Schedule 1 amended (Pension Rights, &c.)**

**13.** Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting the following heading after the heading to Schedule 1:

**PART 1 – CONTRIBUTIONS AND PENSION  
RATES**

- (b) by inserting the following clause after clause 10 in Part 1:

**Reduction in pension**

**11. (1)** A pension payable under this Act –

- (a) is to be reduced to take into account any commutation of the pension under clause 7A or 8; and
- (b) is subject to Part 2 of this Schedule which carries into effect the provisions of the *Family Law Act 1975* of the Commonwealth relating to the splitting of superannuation interests, as defined in Part VIIIB of that Act.

---

<sup>\*</sup>No. 13 of 1983

**s. 13**

No.

*Public Sector Superannuation (Splitting  
of Superannuation Interests)*

2003

**(2)** A lump sum payment under this Act is subject to Part 2 of this Schedule.

(c) by inserting the following Part after clause 11:

**PART 2 - FAMILY LAW (SPLITTING OF  
SUPERANNUATION INTERESTS)**

**Interpretation**

**1. (1)** In this Part –

**“Family Law Act”** means the *Family Law Act 1975* of the Commonwealth;

**“splitting instrument”** means a superannuation agreement, a flagging order, a flag lifting agreement or a splitting order, as those terms are respectively defined in Part VIIIB of the Family Law Act.

**(2)** All expressions used in this Part that are defined in the Family Law Act have the meanings assigned to them in that Act.

**Application of Part**

**2.** This Part applies to –

- (a) any benefit under this Act that is a superannuation interest; and
- (b) any splitting instrument that has an operative time on or after 28 December 2002.

**Objects of Part**

**3. (1)** The objects of this Part are to carry into effect the provisions of the Family Law Act relating to the splitting of superannuation interests.

**(2)** If a provision of this Part is inconsistent with a provision of the Family Law Act, the latter provision prevails to the extent of the inconsistency.

**Duty of Minister to give effect to splitting instruments under Family Law Act**

**4. (1)** Where a splitting instrument affects an entitlement to a pension of a member spouse under this Act, the Minister must give effect to that instrument in paying or determining that benefit.

**(2)** The Minister is not to make a payment to a non-member spouse under this Part before a splittable payment is payable to, or in respect of, the relevant member spouse.

**Commutation of pension on death of non-member spouse**

**5. (1)** Where a share of a pension is payable to a non-member spouse under this Part, the Minister is to commute that share to a lump sum if that non-member spouse predeceases the member spouse in respect of whom the pension is being paid.

(2) For the purposes of subclause (1), the commutation factors are to be determined by the Minister on the advice of the Actuary.

(3) A share of a pension paid or payable to a non-member spouse under this Part does not revert to the widow or widower of that non-member spouse on the death of that non-member spouse.

(4) A lump sum payment calculated under subclause (1) is to be paid to the legal personal representative of the non-member spouse and is to be made in accordance with Part VIIIB of the Family Law Act.

(5) A share of a pension payable to a non-member spouse under this Part ceases –

- (a) on the death of the relevant member spouse; or
- (b) where a reversionary pension is payable in respect of a member spouse, on the cessation of that reversionary pension.

### **Effect of benefit under splitting instrument**

6. If a member spouse dies and is survived by a non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument in respect of the superannuation interest of the member spouse, that non-member spouse is not entitled to a benefit under this Act in respect of the deceased member spouse except in accordance with that instrument.

**Fees for administration of this Part**

7. For the purposes of administering this Part, the Minister may charge reasonable fees in accordance with the Family Law Act.

**Provision of information by Minister**

8. Where an eligible person, within the meaning of section 90MZB of the Family Law Act, has applied to the Minister for information in accordance with that section about the superannuation interest of a member spouse, the Minister must comply with the requirements of that Act as if he or she were the trustee of a superannuation fund.

**PART 6 – RETIREMENT BENEFITS REGULATIONS  
1994 AMENDED****Principal Regulations**

**14.** In this Part, the *Retirement Benefits Regulations 1994\** are referred to as the Principal Regulations.

**Regulation 3 amended (Interpretation)**

**15.** Regulation 3 of the Principal Regulations is amended as follows:

- (a) by inserting the following definition after the definition of “existing contributor” in subregulation (1):

**“Family Law Act”** means the *Family Law Act 1975* of the Commonwealth;

- (b) by inserting the following definition after the definition of “service” in subregulation (1):

**“splitting instrument”** means a superannuation agreement, a flagging order, a flag lifting agreement, or a splitting order, as those terms are respectively defined in Part VIIIB of the Family Law Act;

- (c) by inserting the following subregulation after subregulation (1):

---

\*S.R. 1994, No. 83

**(1AA)** All expressions used in Part 7B that are defined in the Family Law Act have the meanings assigned to them in that Act.

**Regulation 33 amended (Interpretation of Division 3)**

**16.** Regulation 33(3) of the Principal Regulations is amended by omitting “Part 7A” and substituting “Parts 7A and 7B”.

**Regulation 60AA amended (Application of Part)**

**17.** Regulation 60AA of the Principal Regulations is amended by omitting “Part 7A” and substituting “Parts 7A and 7B”.

**Regulation 76AA amended (Application of Part)**

**18.** Regulation 76AA of the Principal Regulations is amended by omitting “Part 7A” and substituting “Parts 7A and 7B”.

**Regulation 78 amended (Pension conversion factors)**

**19.** Regulation 78(4) of the Principal Regulations is amended as follows:

- (a) by omitting from paragraph (c) “regulation 60(3).” and substituting “regulation 60(3); or”;
- (b) by inserting the following paragraph after paragraph (c):

- (d) a non-member spouse, as defined in Part VIIIB of the Family Law Act, in respect of a benefit under Part 7B.

**Regulation 86 amended (Right of certain pensioners to commute pension to lump sum)**

**20.** Regulation 86(4A) of the Principal Regulations is amended by omitting “Part 7A” and substituting “Parts 7A and 7B”.

**Part 7B inserted**

**21.** After regulation 88I of the Principal Regulations, the following Part is inserted:

**PART 7B – FAMILY LAW (SPLITTING OF  
SUPERANNUATION INTERESTS)**

**Application of Part**

**88J.** This Part applies to –

- (a) any splitting instrument that has an operative time on or after 28 December 2002; and
- (b) any benefit under these regulations that is a superannuation interest.

**Objects of Part**

**88K. (1)** The objects of this Part are to carry into effect the provisions of the Family Law Act relating to the splitting of superannuation interests.

(2) If a provision of this Part is inconsistent with a provision of that Act, the latter provision prevails to the extent of the inconsistency.

**Duty of Board to give effect to splitting instruments under Family Law Act**

**88L.** (1) Where a splitting instrument affects an entitlement to a benefit of a member spouse under these regulations, the Board must give effect to that instrument in paying or determining that benefit.

(2) For the purposes of subregulation (1), the Board is to reduce the benefit payable to the member spouse in accordance with the splitting instrument.

(3) Except as provided by subregulation (4), the Board is not to make a payment to a non-member spouse under this Part before a splittable payment is payable to, or in respect of, the relevant member spouse.

(4) Where the Board has established a separate account for a non-member spouse under regulation 88M, the Board may make a payment to that non-member spouse in respect of that account as may be required to give effect to the splitting instrument.

**Accounts for non-member spouse**

**88M.** (1) This regulation applies in respect of a member spouse who has an investment account or a compulsory preservation account.

(2) For the purposes of giving effect to a splitting instrument, the Board, having regard to the

advice of the Actuary, may adjust the balance of an investment account or compulsory preservation account of a member spouse to give effect to the division of the superannuation interest of the member spouse in accordance with that instrument.

(3) For the purposes of this Part, the Board may establish and maintain one or more separate accounts for a non-member spouse as it considers expedient.

(4) For the purposes of giving effect to a splitting instrument, the Board, having regard to the advice of the Actuary, is to credit an appropriate amount to an account of a non-member spouse as may be required to give effect to that instrument.

### **Commutation of pension on death of non-member spouse**

**88N.** (1) Where a share of a pension is payable to a non-member spouse under this Part, the Board is to commute that share to a lump sum if that non-member spouse predeceases the member spouse in respect of whom the pension is being paid.

(2) For the purposes of subregulation (1), the commutation factors are to be determined by the Board on the advice of the Actuary.

(3) A share of a pension paid or payable to a non-member spouse under this Part does not revert to the widow or widower of that non-member spouse on the death of that non-member spouse.

(4) A lump sum payment calculated under subregulation (1) is to be paid to the legal personal representative of the non-member spouse and is to

be made in accordance with Part VIIIB of the Family Law Act.

**(5)** A share of a pension payable to a non-member spouse under this Part ceases –

- (a) on the death of the relevant member spouse; or
- (b) where a reversionary pension is payable in respect of a member spouse, on the cessation of that reversionary pension.

### **Effect of benefit under splitting instrument**

**88P.** If a member spouse dies and is survived by a non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument in respect of the superannuation interest of the member spouse, that non-member spouse is not entitled to a benefit under this Act in respect of the deceased member spouse except in accordance with that instrument.

### **Fees for administration of this Part**

**88Q.** For the purposes of administering this Part, the Board may charge reasonable fees in accordance with the Family Law Act.

### **Provision of information by Board**

**88R.** Where an eligible person, within the meaning of section 90MZB of the Family Law Act, has applied to the Board for information in accordance with that section about the superannuation interest of a

member spouse, the Board must comply with the requirements of that Act.

**Regulation 90 amended (Contributions to Fund by the State and prescribed authorities)**

**22.** Regulation 90(1)(a)(i) of the Principal Regulations is amended by omitting “or 42” and substituting “, 42 or 88N”.

**Schedule 3 amended (Calculation of certain pensions in respect of former contributors under repealed Act)**

**23.** Schedule 3 to the Principal Regulations is amended as follows:

- (a) by omitting subclause (3) from clause 1;
- (b) by inserting the following clause after clause 1:

**Application of this Schedule**

**1A.** This Schedule is subject to Parts 7A and 7B.

**PART 7 – RETIREMENT BENEFITS  
(PARLIAMENTARY SUPERANNUATION)  
REGULATIONS 2002 AMENDED**

**Principal Regulations**

**24.** In this Part, the *Retirement Benefits (Parliamentary Superannuation) Regulations 2002\** are referred to as the Principal Regulations.

**Regulation 19 amended (Application of Division 4)**

**25.** Regulation 19 of the Principal Regulations is amended by inserting “of this Part and to Part 4A” after “Division 5”.

**Regulation 57 substituted**

**26.** Regulation 57 of the Principal Regulations is rescinded and the following regulation is substituted:

**Application of Division 4**

**57.** This Division is subject to Division 5 of this Part and to Part 4A.

**Part 4A inserted**

**27.** After regulation 77 of the Principal Regulations, the following Part is inserted:

---

\*S.R. 2002, No. 176

**PART 4A – FAMILY LAW (SPLITTING OF SUPERANNUATION INTERESTS)****Interpretation of Part**

**77A. (1)** In this Part –

“**Family Law Act**” means the *Family Law Act 1975* of the Commonwealth;

“**splitting instrument**” means a superannuation agreement, a flagging order, a flag lifting agreement or a splitting order, as those terms are respectively defined in Part VIIIB of the Family Law Act.

**(2)** All expressions used in this Part that are defined in the Family Law Act have the meanings assigned to them in that Act.

**Application of Part**

**77B.** This Part applies to –

- (a) any splitting instrument that has an operative time on or after 28 December 2002; and
- (b) any benefit under these regulations that is a superannuation interest.

**Objects of Part**

**77C. (1)** The objects of this Part are to carry into effect the provisions of the Family Law Act relating to the splitting of superannuation interests.

(2) If a provision of this Part is inconsistent with a provision of that Act, the latter provision prevails to the extent of the inconsistency.

**Duty of Board to give effect to splitting instruments under Family Law Act**

**77D.** (1) Where a splitting instrument affects an entitlement to a benefit of a member spouse under these regulations, the Board must give effect to that instrument in paying or determining that benefit.

(2) The Board is not to make a payment to a non-member spouse under this Part before a splittable payment is payable to, or in respect of, the relevant member spouse.

**Commutation of pension on death of non-member spouse**

**77E.** (1) Where a share of a pension is payable to a non-member spouse under this Part, the Board is to commute that share to a lump sum if that non-member spouse predeceases the member spouse in respect of whom the pension is being paid.

(2) For the purposes of subregulation (1), the commutation factors are to be determined by the Board on the advice of the Actuary.

(3) A share of a pension paid or payable to a non-member spouse under this Part does not revert to the widow or widower of that non-member spouse on the death of that non-member spouse.

(4) A lump sum payment calculated under subregulation (1) is to be paid to the legal personal

representative of the non-member spouse and is to be made in accordance with Part VIIIB of the Family Law Act.

(5) A share of a pension payable to a non-member spouse under this Part ceases –

- (a) on the death of the relevant member spouse; or
- (b) where a reversionary pension is payable in respect of a member spouse, on the cessation of that reversionary pension.

### **Effect of benefit under splitting instrument**

**77F.** If a member spouse dies and is survived by a non-member spouse who has received, is receiving or is entitled to receive a benefit under a splitting instrument in respect of the superannuation interest of the member spouse, that non-member spouse is not entitled to a benefit under these regulations in respect of the deceased member spouse except in accordance with that instrument.

### **Fees for administration of this Part**

**77G.** For the purposes of administering this Part, the Board may charge reasonable fees in accordance with the Family Law Act.

### **Provision of information by Board**

**77H.** Where an eligible person, within the meaning of section 90MZB of the Family Law Act, has applied to the Board for information in accordance with that

2003	<i>Public Sector Superannuation (Splitting of Superannuation Interests)</i>	No.	<b>s. 27</b>
------	---	-----	--------------

section about the superannuation interest of a member spouse, the Board must comply with the requirements of that Act.