

# EXPOSURE DRAFT



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## Family Law (Superannuation) Regulations 2024

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2024

David Hurley  
Governor-General

By His Excellency's Command

Mark Dreyfus KC [DRAFT ONLY—NOT FOR SIGNATURE]  
Attorney-General

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Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *Family Law (Superannuation) Regulations 2024*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information        |                                 |                               |
|---------------------------------|---------------------------------|-------------------------------|
| Column 1                        | Column 2                        | Column 3                      |
| Provisions                      | Commencement                    | Date/Details                  |
| 1. The whole of this instrument | <i>[to be inserted later]</i> . | <i>[to be inserted later]</i> |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Family Law Act 1975*.

### 4 Definitions

Note: Expressions used in this instrument have the same meaning as in the Act (see paragraph 13(1)(b) of the *Legislation Act 2003*). Some examples are the following, which are defined in Part VIII B or VIII C of the Act:

- (a) eligible superannuation plan;
- (b) member spouse;
- (c) non-member spouse;
- (d) operative time;
- (e) payment flag;
- (f) payment split;
- (g) superannuation interest.

In this instrument:

**accumulation interest** means a superannuation interest, or a component of a superannuation interest, that is not a defined benefit interest or a small superannuation accounts interest.

**Act** means the *Family Law Act 1975*.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 4

---

**adjusted base amount applicable to the non-member spouse**, for a superannuation interest at a particular date, has the meaning given by section 71.

**allocated annuity** means an annuity that is paid, within a range of minimum and maximum payments, from an identifiable lump sum and includes an annuity that arises under a contract that meets the standards of subregulation 1.05(4) of the SIS Regulations.

**allocated pension** means a pension paid, within a range of minimum and maximum payments, from an identifiable lump sum, including:

- (a) a pension provided under rules of a superannuation fund that meet the standards of subregulation 1.06(4) of the SIS Regulations; and
- (b) a pension provided under terms and conditions of an RSA that meet the standards of subregulation 1.07(2) of the RSA Regulations.

**annuity provider** means a person, body or organisation that has entered into a contract to provide an annuity.

**applicable adjustment period**, for a superannuation interest, has the meaning given by section 72 or 73.

**base amount**, for a superannuation interest, means:

- (a) if the interest is identified in a superannuation agreement or flag lifting agreement:
  - (i) the base amount specified in the agreement for the interest for the purposes of Part VIII B or VIII C of the Act, rounded up or down to the nearest dollar (with 50 cents being rounded up); or
  - (ii) the base amount calculated using a method specified in the agreement, rounded up or down to the nearest dollar (with 50 cents being rounded up); and
- (b) if a splitting order applies for the interest—the base amount allocated to the non-member spouse by the court under subsection 90XT(4) or 90YY(5) of the Act, rounded up or down to the nearest dollar (with 50 cents being rounded up).

**component** of a superannuation interest: despite any other law, a part of a superannuation interest that a person has as a member of an eligible superannuation plan is a **component** of the superannuation interest if:

- (a) the part has distinct features and characteristics; and
- (b) the part has requirements that must be met before a benefit in respect of the part becomes payable to the member; and
- (c) the part is not the way in which that benefit is paid to the member; and
- (d) the part does not make up the entire superannuation interest.

**constitutionally protected fund** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**deferred annuity** means an annuity that is not presently payable.

**defined benefit interest** has the meaning given by section 5.

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

**fixed term annuity** means an annuity that:

- (a) is not a market linked annuity; and
- (b) is paid for a fixed period.

**growth phase** for:

- (a) a superannuation interest (other than a small superannuation accounts interest) of a member spouse; or
- (b) a component of such an interest;

has the meaning given by section 6 or 7.

**innovative superannuation interest** means a superannuation interest, or a component of a superannuation interest, if all benefits in respect of the interest or the component of the interest are provided under:

- (a) a contract that meets the standards of subregulation 1.06A(2) of the SIS Regulations; or
- (b) the governing rules of an eligible superannuation plan where those rules meet the standards of subregulation 1.06A(2) of the SIS Regulations.

**Judges' Pensions Act Scheme** means the scheme constituted by the *Judges' Pensions Act 1968* for the provision of retirement and other benefits to and in respect of Judges, within the meaning of that Act.

**lifetime pension**: a benefit in respect of a superannuation interest, or a component of a superannuation interest, of a member spouse in an eligible superannuation plan is a **lifetime pension** of the member spouse if the benefit is payable as a pension for the life of the member spouse.

Note: Section 15 also affects the meaning of **lifetime pension**.

**market linked annuity** means an annuity, other than an allocated annuity, that:

- (a) is paid from an identifiable lump sum; and
- (b) arises under a contract that meets the standards of subregulation 1.05(10) of the SIS Regulations.

**market linked pension** means a pension, other than an allocated pension, paid from an identifiable lump sum that meets the standards of subregulation 1.06(8) of the SIS Regulations or subregulation 1.07(3A) of the RSA Regulations.

**member information statement**, for a member of an eligible superannuation plan, means a statement issued periodically to the member by the trustee of the plan that sets out information about the value of the member's superannuation interest in the plan (for example, the member's account balance, share in the plan or withdrawal benefit) at a particular date.

**member's retirement age**, for a member who has a defined benefit interest in an eligible superannuation plan, means:

- (a) subject to paragraphs (b) and (c), the latest retirement age for the member specified in the governing rules of the plan; or

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 4

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- (b) if the latest retirement age for the member specified in the governing rules of the plan is more than 65 years, or no retirement age is specified in the governing rules of the plan—65 years; or
- (c) if the Minister has, under section 53, approved a retirement age as the retirement age for members of the plan, or an identifiable class of members of the plan that includes the member—the approved age.

Note: Section 53 authorises the Minister to approve as the retirement age for members, or an identifiable class of members, who hold a defined benefit interest in an eligible superannuation plan, an age other than:

- (a) the retirement age specified in the governing rules of the plan; or
- (b) the age of 65 years.

**net earnings**, for a superannuation interest in a regulated superannuation fund, approved deposit fund or RSA to which the financial product disclosure provisions of the *Corporations Regulations 2001* (being the provisions in Part 7.9 of those Regulations) apply, has the meaning given by regulation 7.9.01 of those Regulations.

**partially vested accumulation interest** has the meaning given by section 9.

**payment phase** for:

- (a) a superannuation interest (other than a small superannuation accounts interest) of a member spouse; or
- (b) a component of such an interest;

has the meaning given by section 8.

**pension** means a pension, within the meaning of section 10 of the SIS Act, payable from an eligible superannuation plan (other than an account within the meaning of the *Small Superannuation Accounts Act 1995*).

**percentage-only interest** has the meaning given by section 10.

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

**relevant condition of release** has the meaning given by section 19.

**relevant date**, for the purposes of determining under Part 6 an amount for a superannuation interest that is subject to a payment split, means:

- (a) in relation to a payment split under a superannuation agreement or flag lifting agreement:
  - (i) the date agreed on for that purpose by the parties to the agreement; or
  - (ii) if no date is agreed on by the parties to the agreement and the agreement is dated—the date shown on the agreement; or
  - (iii) if no date is agreed on by the parties to the agreement and the agreement is not dated—the date when a copy of the agreement is served on the trustee of the relevant eligible superannuation plan; and
- (b) in relation to a payment split under a splitting order—the date determined by the court.

Note: While Part 6 does not expressly apply to payment splits under a superannuation agreement or flag lifting agreement, the parties to the agreement may nevertheless agree to use the methods in Part 6 to determine an amount for the superannuation interest. Paragraph (a) of this definition applies for that case.



**RSA Regulations** means the *Retirement Savings Accounts Regulations 1997*.

**self managed superannuation fund** has the same meaning as in the SIS Act.

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994*.

**small superannuation accounts interest** means a superannuation interest in an account within the meaning of the *Small Superannuation Accounts Act 1995*.

**superannuation annuity** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

**superannuation contributions surcharge** or **surcharge** means the tax imposed by the *Superannuation Contributions Tax Imposition Act 1997*.

**superannuation fund** has the same meaning as in the SIS Act.

**underlying valuation information** has the meaning given by subsection 107(2).

**unflaggable interest** has the meaning given by section 13.

**unsplittable interest** has the meaning given by section 14.

**value of the non-member spouse's entitlement** has the meaning given by:

- (a) in Subdivision B of Division 3 of Part 3—section 25; or
- (b) in Subdivision A of Division 4 of Part 3—section 29; or
- (c) in Subdivision B of Division 4 of Part 3—section 32; or
- (d) in Subdivision C of Division 4 of Part 3—section 35.

**withdrawal benefit:**

- (a) for a member of a regulated superannuation fund, an exempt public sector superannuation scheme or an approved deposit fund, has the meaning given by subregulation 1.03(1) of the SIS Regulations; and
- (b) for a member of an RSA, has the meaning given by subregulation 1.03(1) of the RSA Regulations; and
- (c) for a member who has a small superannuation accounts interest, means the balance of the member's account; and
- (d) for a member of any other eligible superannuation plan, means the total amount of benefits that would be payable to the member if the member voluntarily ceased to be a member of the plan.

## **5 Meaning of defined benefit interest**

(1) A **defined benefit interest** is:

- (a) a superannuation interest that:
  - (i) a member spouse has in an eligible superannuation plan; and
  - (ii) is an interest in respect of the whole of which the member spouse is entitled, when benefits in respect of the interest become payable, to be paid a benefit that is, or may be, defined by reference to one or more of the amounts or factors mentioned in subsection (3); or
- (b) a component of a superannuation interest that:

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

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- (i) a member spouse has in an eligible superannuation plan; and
  - (ii) is a component in respect of which the member spouse is entitled, when benefits in respect of the interest become payable, to be paid a benefit that is, or may be, defined by reference to one or more of the amounts or factors mentioned in subsection (3); or
  - (c) a superannuation interest that:
    - (i) a member spouse has in the scheme provided for by the *Australian Defence Force Cover Act 2015*; and
    - (ii) is in the payment phase.
- (2) However, a superannuation interest, or a component of a superannuation interest, is not a **defined benefit interest** because of paragraph (1)(a) or (b) if:
- (a) the only benefits payable in respect of the interest or component that are defined by reference to one or more of the amounts or factors mentioned in subsection (3) are benefits payable on death or invalidity; and
  - (b) there are no other circumstances in which benefits payable in respect of the interest or component are, or could have been, defined by reference to the amounts or factors mentioned in subsection (3).

Note 1: This subsection has the effect that paragraphs (1)(a) and (b) do not apply to a superannuation interest or component if defined benefit factors:

- (a) are only used to calculate death or invalidity benefits in respect of the interest or component; and
- (b) would not be used to calculate benefits in respect of the interest or component that would become payable in other circumstances, such as on age retirement or the termination of employment.

Note 2: However, this subsection does not prevent a superannuation interest or component mentioned in paragraph (1)(c) being a defined benefit interest for the purposes of these Regulations (even if paragraph (1)(a) or (b) could also apply to the superannuation interest or component).

Example 1: Benefits in respect of a superannuation interest of a member spouse are payable on retirement based on the balance of the member's account. However, on death or invalidity the benefit is to be defined by reference to amounts or factors mentioned in subsection (3). The member retires on invalidity and the benefits that become payable to the member are then defined by reference to those amounts or factors. The superannuation interest is not a defined benefit interest because defined benefit factors only applied, and could only have applied, in the circumstance of the death or invalidity of the member spouse.

Example 2: Benefits in respect of a component of a superannuation interest of a member spouse are payable in a range of circumstances, including death, invalidity or retirement, and are to be defined by reference to amounts or factors mentioned in subsection (3). The component is a defined benefit interest because death or invalidity are not the only circumstances in which defined benefit factors are, or could be, applied to calculate the benefits in respect of the interest.

- (3) For the purposes of subsections (1) and (2), the amounts and factors are as follows:
- (a) the amount of:
    - (i) the member spouse's salary at the date of the termination of the member spouse's employment, the date of the member spouse's retirement, or another date; or
    - (ii) the member spouse's salary averaged over a period;

- (b) the amount of salary, or allowance in the nature of salary, payable to another person (for example, a judicial officer, a member of the Commonwealth or a State Parliament, or a member of the Legislative Assembly of a Territory);
- (c) a specified amount;
- (d) specified conversion factors.

## **6 Meaning of *growth phase*—superannuation interests in regulated superannuation funds, approved deposit funds and RSAs**

- (1) This section applies to a superannuation interest of a member spouse in any of the following eligible superannuation plans:
  - (a) a regulated superannuation fund;
  - (b) an approved deposit fund;
  - (c) an RSA.

- (2) The superannuation interest, or a component of the interest, is in the *growth phase* at a particular date if, at that date, the member spouse satisfies the requirements of subsection (3), (4) or (5).

- (3) A member spouse satisfies the requirements of this subsection at a particular date if, at that date, the member spouse has not satisfied a relevant condition of release for the superannuation interest or the component of the interest.

Note: For the meaning of *satisfies a relevant condition of release*, see subsection (6).

- (4) A member spouse satisfies the requirements of this subsection at a particular date if, at that date:
  - (a) the member spouse has satisfied a relevant condition of release for the superannuation interest or the component of the interest; but
  - (b) no benefit has been paid in respect of the superannuation interest or the component of the interest, and no action has been taken by or for the member spouse under the governing rules of the plan to cash any benefit that the member spouse is entitled to be paid as a result of satisfying the condition of release.

Note: For the meaning of *satisfies a relevant condition of release*, see subsection (6).

- (5) A member spouse satisfies the requirements of this subsection at a particular date if, at that date:
  - (a) the member spouse has satisfied a relevant condition of release for the superannuation interest or the component of the interest; but
  - (b) a benefit (other than a benefit that is paid as a pension) has been paid in respect of the superannuation interest or the component of the interest to or for the benefit of:
    - (i) the member spouse; or
    - (ii) if the member spouse has died—the member spouse’s legal personal representative;but no action has been taken by or for the member spouse, or that representative, under the governing rules of the plan to receive any other

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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benefit that the member spouse, or the member spouse's estate, is entitled to be paid as a result of satisfying the condition of release.

#### *Meaning of satisfies a relevant condition of release*

- (6) For the purposes of this section, a member spouse ***satisfies a relevant condition of release*** at a date for a superannuation interest, or a component of a superannuation interest, if at that date:
- (a) if the superannuation interest is in a regulated superannuation fund—a condition of release mentioned in item 101, 102, 102A, 103, 106 or 108 of Schedule 1 to the SIS Regulations is satisfied; or
  - (b) if the superannuation interest is in an approved deposit fund—a condition of release mentioned in item 201, 202A, 202, 203 or 206 of Schedule 1 to the SIS Regulations is satisfied; or
  - (c) if the superannuation interest is in an RSA—a condition of release mentioned in item 101, 102, 102A, 103, 106 or 107 of Schedule 2 to the RSA Regulations is satisfied.

#### **7 Meaning of *growth phase*—superannuation interests in other eligible superannuation plans**

- (1) This section applies to a superannuation interest of a member spouse in any of the following eligible superannuation plans:
- (a) a superannuation annuity;
  - (b) a superannuation fund other than a regulated superannuation fund.
- (2) The superannuation interest, or a component of the interest, is in the ***growth phase*** at a particular date if, at that date:
- (a) a releasing event has not occurred for the member spouse for the superannuation interest or the component of the interest; or
  - (b) a releasing event has occurred for the member spouse for the superannuation interest or the component of the interest, but no action has been taken by or for the member spouse under the governing rules of the plan to receive any benefit that the member spouse is entitled to be paid as a result of the occurrence of the releasing event; or
  - (c) a releasing event has occurred for the member spouse for the superannuation interest or the component of the interest, and a benefit (other than a benefit that is paid as a pension) has been paid to or for the benefit of:
    - (i) the member spouse; or
    - (ii) if the member spouse has died—the member spouse's legal personal representative;but no action has been taken by or for the member spouse, or that legal personal representative, under the governing rules of the plan to receive any other benefit that the member spouse, or the member spouse's estate, is entitled to be paid as a result of the occurrence of the releasing event.

## *Meaning of releasing event*

- (3) For the purposes of this section, a ***releasing event*** has occurred for a member spouse at a particular date for a superannuation interest, or a component of a superannuation interest, if at that date:
- (a) the member spouse has retired; or
  - (b) the member spouse has died; or
  - (c) the member spouse has a terminal medical condition (as defined in regulation 6.01A of the SIS Regulations); or
  - (d) as a result of the member spouse's ill health (whether physical or mental), the member spouse:
    - (i) has ceased to be gainfully employed (including if the member spouse has ceased temporarily to receive any gain or reward under a continuing arrangement for the member spouse to be gainfully employed); and
    - (ii) is unlikely, because of the ill health, ever again to engage in gainful employment for which the member spouse is reasonably qualified by education, training or experience; or
  - (e) the member spouse has turned 65 years; or
  - (f) in the case of a member spouse for whom:
    - (i) the member spouse's employer; or
    - (ii) one or more associates (within the meaning of section 12 of the SIS Act) of the member spouse's employer;has contributed to the member spouse's eligible superannuation plan in relation to the superannuation interest—the member spouse has ceased the member spouse's employment with that employer.

## **8 Meaning of *payment phase***

Either:

- (a) a superannuation interest (other than a small superannuation accounts interest) of a member spouse in an eligible superannuation plan; or
- (b) a component of such a superannuation interest;

is in the ***payment phase*** at a particular date if it is not in the growth phase at that date.

## **9 Meaning of *partially vested accumulation interest***

- (1) An accumulation interest that a member spouse has as a member of an eligible superannuation plan is a ***partially vested accumulation interest*** if subsection (2) or (3) applies in relation to the interest.
- (2) This subsection applies in relation to the superannuation interest if the withdrawal benefit in relation to the member spouse on a particular day is less than the total amount notionally or actually allocated to the member spouse on that day, except if the withdrawal benefit is less than that notional or actual amount because of any of the following reasons:
  - (a) the trustee of the plan has been assessed to be liable to pay superannuation contributions surcharge in respect of the member spouse, and the trustee

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 10

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- has not debited the amount notionally or actually allocated to the member spouse in respect of that liability;
- (b) insurance costs have been charged against the member spouse's benefits in the plan;
  - (c) any other fees, taxes or charges will be charged against the member spouse's benefits when the member spouse ceases to be a member of the plan.
- (3) This subsection applies in relation to the superannuation interest if the benefits to which the member spouse is or may be entitled, on voluntarily ceasing to be a member of the eligible superannuation plan, may include an additional benefit that is calculated by reference to the amount that has been credited, under the governing rules of the plan, to the member spouse in respect of contributions that have been made by, or in respect of, the member spouse.

### 10 Meaning of *percentage-only interest*

- (1) For the purposes of the definitions of *percentage-only interest* in sections 90XD and 90YD of the Act, each of the following superannuation interests is prescribed:
- (a) a superannuation interest in the scheme constituted by the *Judges' Pensions Act 1953* (NSW);
  - (b) a superannuation interest to which section 11 applies;
  - (c) a superannuation interest in the scheme constituted by the *Judges' (Pensions and Long Leave) Act 1957* (Qld);
  - (d) a superannuation interest in the scheme constituted by the *Governors' (Salary and Pensions) Act 2003* (Qld);
  - (e) a superannuation interest in the scheme constituted by the *Judges' Contributory Pensions Act 1968* (Tas);
  - (f) a superannuation interest in the Parliamentary Retiring Benefits Fund continued, under regulation 50 of the *Retirement Benefits (Parliamentary Superannuation) Regulations 2012* (Tas), as a subfund of the Retirement Benefits Fund;
  - (g) a superannuation interest in a superannuation annuity.
- (2) However, the superannuation interest is not prescribed as a *percentage-only interest* if it is covered by an item of the following table and immediately before the relevant day mentioned in that item:
- (a) either:
    - (i) the interest is covered by a superannuation agreement or a flag lifting agreement that is in force and provides for a payment split; or
    - (ii) the interest is an interest to which subsection 90XJ(5) or 90YN(5) of the Act applies; or
  - (b) the interest is covered by a splitting order; or
  - (c) the non-member spouse has served a waiver notice on the trustee under section 90XZA or 90YZQ of the Act in respect of the interest.

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**When the superannuation interest is not a *percentage-only interest***

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| <b>Item</b> | <b>If the superannuation interest is covered by:</b> | <b>the relevant day is:</b> |
|-------------|--|-----------------------------|
| 1           | paragraph (1)(c) of this section                     | 3 September 2003            |
| 2           | paragraph (1)(e) of this section                     | 2 May 2003                  |
| 3           | paragraph (1)(f) of this section                     | 2 May 2003                  |

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- (3) Subsection (2) applies only in relation to the agreement, order or notice.
- (4) A reference in subsection (1) to an Act, or instrument, of a State or Territory is a reference to that Act or instrument as in force on *[insert this instrument's commencement date later]*.

## **11 Meaning of *percentage-only interest*—parliament 70 category under the deed for the Australian Retirement Trust**

- (1) For the purposes of paragraph 10(1)(b), this section applies to a superannuation interest held by a person by belonging to the parliament 70 category under Chapter 9 of the Government Division Rules if:
- (a) the interest is held by a person who has received salary as a member of the Assembly for an aggregate period of less than 8 years; or
  - (b) all of the following apply:
    - (i) the interest is held by a person who has received salary as a member of the Assembly for an aggregate period of at least 8 years;
    - (ii) after the person first began receiving salary as a member but before the person had completed an aggregate period of service of at least 8 years, the interest became subject to a payment split;
    - (iii) subsection (2) does not apply to the payment split; or
  - (c) all of the following apply:
    - (i) the interest is a percentage-only interest under paragraph (b) or this paragraph;
    - (ii) while the interest is a percentage-only interest under either of those paragraphs, the interest becomes subject to a second or later payment split;
    - (iii) subsection (2) does not apply to any of the payment splits in relation to the interest.
- (2) This subsection applies to a payment split if:
- (a) for a payment split under a superannuation agreement or flag lifting agreement—the agreement has been terminated or set aside; or
  - (b) for a payment split under a splitting order—the order has been set aside; or
  - (c) an amount has been paid under subsection 363(2) of the Participation Schedule or subsection 25G(2) of the repealed Act in relation to the entitlement under the applicable superannuation agreement, flag lifting agreement or splitting order; or
  - (d) the person for whose benefit the applicable superannuation agreement, flag lifting agreement or splitting order was made has elected to be paid a lifetime pension under subsection 367(4) of the Participation Schedule or

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 12

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subsection 25K(4) of the repealed Act in relation to the entitlement under the agreement or order.

(3) In this section:

**Assembly** means the Legislative Assembly of Queensland.

**Government Division Rules** means the Division Rules:

(a) within the meaning of the trust deed, as existing on *[insert this instrument's commencement date later]*, that governs the scheme continued in existence under section 5 of the *Superannuation (State Public Sector) Act 1990* (Qld); and

(b) as in force on *[insert this instrument's commencement date later]*; that relate to the Government Division referred to in clause 2.1 of that deed.

**Participation Schedule** means the part of the Government Division Rules known as the Participation Schedule.

**repealed Act** means the *Parliamentary Contributory Superannuation Act 1970* (Qld).

## 12 Meaning of trustee

(1) For the purposes of paragraph (b) of the definitions of **trustee** in sections 90XD and 90YD of the Act, each of the persons mentioned in an item of the following table is identified as a trustee of the eligible superannuation plan mentioned in that item.

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### Persons identified as a trustee of an eligible superannuation plan

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| Item | Each of these persons is identified as a trustee:   | of this plan:   |
|------|---|---|
| 1    | (a) the General Manager of Fair Work Australia, for a member of the Scheme who is: <ul style="list-style-type: none"><li>(i) the President (or a former President) of Fair Work Australia; or</li><li>(ii) a Deputy President (or a former Deputy President) of Fair Work Australia who was a Presidential Member of the Australian Industrial Relations Commission; or</li><li>(iii) a former Presidential Member of the Australian Industrial Relations Commission; or</li><li>(iv) a spouse of a person mentioned in subparagraph (i), (ii), or (iii);</li></ul> (b) for any other member of the Scheme—the Secretary of the Department of Finance | the Judges' Pensions Act Scheme.  |
| 2    | the Parliamentary Retiring Allowances Trust established under the <i>Parliamentary Contributory Superannuation Act 1948</i>   | the scheme constituted by the <i>Parliamentary Contributory Superannuation Act 1948</i> . |
| 3    | an RSA provider (within the meaning of the <i>Retirement Savings Accounts Act 1997</i> ) that has accepted contributions to an RSA  | that RSA.   |

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# EXPOSURE DRAFT

Preliminary **Part 1**

## Section 13

| <b>Persons identified as a trustee of an eligible superannuation plan</b> |   |  |
|---|---|--|
| <b>Item</b>   | <b>Each of these persons is identified as a trustee:</b>  | <b>of this plan:</b>   |
| 4   | the Commissioner of Taxation  | an account (within the meaning of the <i>Small Superannuation Accounts Act 1995</i> ).   |
| 5   | an annuity provider that has entered into a contract with a person to provide a superannuation annuity to that person | that superannuation annuity.   |
| 6   | CSC (within the meaning of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i> )           | the scheme constituted by the <i>Defence Force (Superannuation) (Productivity Benefit) Determination 1988</i> made under subsection 52(1) of the <i>Defence Act 1903</i> . |
| 7   | the Secretary of the Department of Finance  | the scheme constituted by the <i>Governor-General Act 1974</i> .   |

(2) In this section:

**Department of Finance** means the Department administered by the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

**Presidential Member** means the President, a Vice President, a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission.

### 13 Meaning of *unflaggable interest*

For the purposes of the definitions of *unflaggable interest* in sections 90XD and 90YD of the Act, a superannuation interest of a member spouse that is in the payment phase is prescribed.

### 14 Meaning of *unsplittable interest*

(1) For the purposes of the definitions of *unsplittable interest* in sections 90XD and 90YD of the Act, a superannuation interest of a member spouse is prescribed if the superannuation interest:

- (a) is covered by subsection (2) or (3) of this section; and
- (b) is none of the following:
  - (i) a superannuation interest in the scheme provided under the *Judges' Pensions Act 1971 (SA)* as in force on [insert this instrument's commencement date later];
  - (ii) a superannuation interest in the scheme constituted by the *Parliamentary Contributory Superannuation Act 1948*.

Note: Prescribing these superannuation interests makes them unsplittable interests. An unsplittable interest cannot be the subject of a payment split under a superannuation agreement, flag lifting agreement or splitting order (see Part VIII B or VIII C of the Act).

(2) This subsection covers a superannuation interest of a member spouse that is an interest in respect of which:

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 15

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- (a) the whole or remaining part of the benefits are being paid to the member spouse as:
    - (i) a lifetime pension or fixed-term pension that the member is no longer entitled to commute; or
    - (ii) a lifetime annuity or fixed-term annuity; and
  - (b) the amount of the annual benefit payable to the member is less than \$2,000.
- (3) This subsection covers a superannuation interest of a member spouse that:
- (a) is not an interest to which paragraph (2)(a) applies; and
  - (b) is an interest with a withdrawal benefit in relation to the member spouse of less than \$5,000.
- (4) To avoid doubt, a superannuation interest not covered by this section is not an unsplitable interest only because payments in respect of the interest are not splittable payments.

### **15 Meaning of *lifetime pension* etc.**

To avoid doubt, a benefit in respect of a superannuation interest, or a component of a superannuation interest, of a member spouse in an eligible superannuation plan that is paid as a pension is not prevented from being a *lifetime pension* of the member spouse, or a pension payable for the life of a member spouse, merely because:

- (a) the benefit is paid upon the retirement of the member spouse (including retirement on the basis of invalidity); and
- (b) under the governing rules of the plan, the payments may be varied (including by being reduced to nil), suspended or cancelled.

# EXPOSURE DRAFT

Payments that are not splittable payments: payments of a particular character, or payments after death of member spouse **Part 2**

Section 16

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## **Part 2—Payments that are not splittable payments: payments of a particular character, or payments after death of member spouse**

### **16 Payments of a particular character that are not splittable payments**

- (1) Each of the payments mentioned in subsection (2) in respect of a superannuation interest of the member spouse:
  - (a) is prescribed for the purposes of subsection 90XE(2) and 90YG(2) of the Act; and
  - (b) as a result, is not a splittable payment for the purposes of all payment splits in respect of the superannuation interest.

Note: The payment will not be a splittable payment generally, rather than only not being a splittable payment for a particular payment split (see subsection 90XE(2) or 90YG(2) of the Act).

- (2) The payments are as follows:
  - (a) a payment of benefits to the member spouse that is made following a determination, under subregulation 6.19A(1) of the SIS Regulations or subregulation 4.22A(1) of the RSA Regulations, that a condition of release of the benefits on a compassionate ground has been satisfied;
  - (b) a payment to the member spouse that is made because the member spouse is taken to be in severe financial hardship;
  - (c) a pension payment to the member spouse that is paid on the basis of temporary incapacity (within the meaning of regulation 6.01 of the SIS Regulations), other than a payment that is:
    - (i) one of a series of payments of that kind that have been paid to the member spouse for a period of at least 2 years and is made more than 2 years after the first such payment of that series; or
    - (ii) a payment to which paragraph (ea) of this subsection applies; or
    - (iii) a payment from a lifetime pension;
  - (d) if the superannuation interest is in a superannuation fund that is not a regulated superannuation fund—a payment to the member spouse that is made on compassionate grounds as provided by the governing rules of the plan;
  - (e) if the superannuation interest is in a superannuation annuity that is a deferred annuity—a payment to the member spouse that is made on compassionate grounds under a term of the annuity;
  - (f) if the superannuation interest is in the superannuation scheme constituted by the *Superannuation Act 1976* or the *Superannuation Act 1990*—a payment to the member spouse that is made:
    - (i) during any period in which the member spouse's health is being assessed for the purpose of determining the member spouse's eligibility for payment on the ground that the member spouse is totally and permanently incapacitated; or
    - (ii) because the member spouse's salary or other remuneration, or hours of employment, have been reduced because of ill health;

# EXPOSURE DRAFT

**Part 2** Payments that are not splittable payments: payments of a particular character, or payments after death of member spouse

## Section 17

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- (g) if the superannuation interest is in the superannuation scheme continued in existence by the *Superannuation (State Public Sector) Act 1990* (Qld)—a pension payment to the member spouse that is:
- (i) an income protection benefit paid under section 50 of the Participation Schedule; or
  - (ii) an incapacity benefit to which the member spouse is entitled under paragraph 136(b) of the Participation Schedule; or
  - (iii) an incapacity pension to which the member spouse is entitled under paragraph 199(b) of the Participation Schedule;

Note: In 2024, the scheme continued in existence by the *Superannuation (State Public Sector) Act 1990* (Qld) was known as the Australian Retirement Trust.

- (h) if the superannuation interest is in an account (within the meaning of the *Small Superannuation Accounts Act 1995*)—a payment to the member spouse from the account, if:
- (i) in accordance with a superannuation agreement, flag lifting agreement or splitting order that has been served on the trustee of the account, the trustee has opened a separate account under the *Small Superannuation Accounts Act 1995* for the non-member spouse, and has transferred an amount from the member spouse's account to that separate account; and
  - (ii) but for the operation of this paragraph, the non-member spouse would have been entitled to be paid an amount in respect of the payment.

(3) In this section:

**Government Division Rules** means the Division Rules:

- (a) within the meaning of the trust deed, as existing on *[insert this instrument's commencement date later]*, that governs the scheme continued in existence under section 5 of the *Superannuation (State Public Sector) Act 1990* (Qld); and
- (b) as in force on *[insert this instrument's commencement date later]*;

that relate to the Government Division referred to in clause 2.1 of that deed.

**Participation Schedule** means the part of the Government Division Rules known as the Participation Schedule.

**severe financial hardship** has the meaning given by subregulation 6.01(5) of the SIS Regulations.

## 17 Payments after death of member spouse that are not splittable payments

- (1) Each of the payments mentioned in subsection (2) made after the death of a member spouse in respect of a superannuation interest of the member spouse:
- (a) is prescribed for the purposes of subsection 90XE(2) and 90YG(2) of the Act; and
  - (b) as a result, is not a splittable payment for the purposes of all payment splits in respect of the superannuation interest.

Note: The payment will not be a splittable payment generally, rather than only not being a splittable payment for a particular payment split (see subsection 90XE(2) or 90YG(2) of the Act).

# EXPOSURE DRAFT

Payments that are not splittable payments: payments of a particular character, or payments after death of member spouse **Part 2**

## Section 17

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- (2) The payments are as follows:
- (a) a payment to a reversionary beneficiary who is a child in relation to the member spouse if, at the date of the payment, the child has not turned 18;
  - (b) a payment to a reversionary beneficiary who is a child in relation to the member spouse if:
    - (i) immediately before the death of the member spouse, the child was dependent on the member spouse; and
    - (ii) at the date of the payment, the child has turned 18; and
    - (iii) the payment is made to enable the child to complete the child's education or, if the child has special needs because of a physical or intellectual disability, to provide maintenance and meet expenses in respect of those needs;
  - (c) a payment to a reversionary beneficiary for the benefit of a child in relation to the member spouse, if the requirements of paragraph (a) or (b) are satisfied in relation to the child and the payment.

- (3) In this section:

**child**, in relation to a member spouse who has a superannuation interest in an eligible superannuation plan, means:

- (a) a child of the member spouse, within the meaning of section 60F of the Act; or
- (b) a child of the member spouse under the governing rules of the plan; or
- (c) a child who has been determined by the trustee of the plan, under the governing rules of the plan, to be a child of the member spouse; or
- (d) a child for whom the member spouse had, at the time of the member spouse's death, responsibility for the day-to-day care, welfare and development under:
  - (i) an order under Part VII of the Act; or
  - (ii) an order under Part 5 of the *Family Court Act 1997* (WA) as in force on *[insert this instrument's commencement date later]*; or
  - (iii) an order under a corresponding law of a foreign country.

# EXPOSURE DRAFT

**Part 3** Payments that are not splittable payments: payments made in particular circumstances

**Division 1** Preliminary

Section 18

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## **Part 3—Payments that are not splittable payments: payments made in particular circumstances**

**Division 1—Preliminary**

### **18 Simplified outline of this Part**

Division 2 provides that a payment in respect of a superannuation interest of a member spouse is not a splittable payment for the purposes of applying Part VIII B or VIII C of the Act to a superannuation agreement, flag lifting agreement or splitting order if:

- (a) where the interest is not a percentage only interest—the requirements of a Subdivision of Division 3 are met; or
- (b) where the interest is a percentage only interest—the requirements of a Subdivision of Division 4 are met; or
- (c) the requirements of Division 5 are met for a payment by the member spouse in satisfaction of the non-member spouse's entitlement under the agreement or order.

### **19 Meaning of *relevant condition of release***

- (1) A ***relevant condition of release***, for a superannuation interest, is:
  - (a) if the superannuation interest is in a regulated superannuation fund or an exempt public sector superannuation scheme—a condition of release mentioned in item 101, 102, 102A, 103 or 106 of Schedule 1 to the SIS Regulations; and
  - (b) if the superannuation interest is in an approved deposit fund—a condition of release mentioned in item 201, 202, 202A, 203 or 206 of Schedule 1 to the SIS Regulations; and
  - (c) if the superannuation interest is in an RSA—a condition of release mentioned in item 101, 102, 102A, 103 or 106 of Schedule 2 to the RSA Regulations; and
  - (d) if the superannuation interest is in a superannuation annuity—a condition of release mentioned in item 201, 202, 202A, 203 or 206 of Schedule 1 to the SIS Regulations.
- (2) For the purposes of this instrument, a non-member spouse is taken to satisfy a relevant condition of release if the event specified in the condition has occurred in relation to the non-member spouse.
- (3) For the purposes of this instrument, when applying item 101, 103, 201 or 203 of Schedule 1 to the SIS Regulations to a non-member spouse, a reference in:
  - (a) the definition of ***permanent incapacity*** in regulation 1.03C of the SIS Regulations; and
  - (b) subregulation 6.01(7) of the SIS Regulations;to a member is taken to be a reference to the non-member spouse.

# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
Preliminary **Division 1**

## Section 19

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- (4) For the purposes of this instrument, when applying item 101 or 103 of Schedule 2 to the RSA Regulations to a non-member spouse, a reference in:
- (a) the definition of *permanent incapacity* in subregulation 4.01(2) of the RSA Regulations; and
  - (b) subregulation 4.01(4) of the RSA Regulations;
- to an RSA holder is taken to be a reference to the non-member spouse.

# EXPOSURE DRAFT

**Part 3** Payments that are not splittable payments: payments made in particular circumstances

**Division 2** Circumstances when payments are not splittable payments

Section 20

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## **Division 2—Circumstances when payments are not splittable payments**

### **20 Circumstances when payments are not splittable payments**

- (1) Subsection (2) applies to a payment in respect of a superannuation interest of a member spouse if:
  - (a) a superannuation agreement, flag lifting agreement or splitting order applies to the superannuation interest; and
  - (b) the payment is made after the requirements of:
    - (i) a Subdivision of Division 3 or 4; or
    - (ii) Division 5;are met for the non-member spouse's entitlement under that agreement or order in respect of the interest.
- (2) For the purposes of subsection 90XE(2) or 90YG(2) of the Act, the payment is prescribed for the purposes of applying Part VIII B or VIII C of the Act to that agreement or order.

Note: This means the payment is not a splittable payment for those purposes.



# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
When the payment relates to a superannuation interest that is not a percentage-only interest **Division 3**

Section 21

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## **Division 3—When the payment relates to a superannuation interest that is not a percentage-only interest**

### **Subdivision A—New interest created, or amount transferred or rolled over or paid, under SIS Regulations or RSA Regulations, in satisfaction of the non-member spouse’s entitlement**

#### **21 Requirements of this Subdivision**

- (1) The requirements of this Subdivision are met for a non-member spouse’s entitlement under a particular superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest if:
  - (a) the interest is not a percentage-only interest; and
  - (b) subsection (2) or (3) applies for the interest.
- (2) This subsection applies for the superannuation interest if the trustee of the relevant eligible superannuation plan has, under the payment split provisions of the SIS Regulations, done any of the following things:
  - (a) created a new interest in the plan for the non-member spouse;
  - (b) transferred or rolled over an amount equal to the value of the benefit that the non-member spouse would be required to have if a new interest had been created for the non-member spouse under the payment split provisions of the SIS Regulations;
  - (c) paid to the non-member spouse the amount that the non-member spouse is entitled in respect of the superannuation interest at the time of the payment.
- (3) This subsection applies for the superannuation interest if the trustee of the relevant eligible superannuation plan has, under the payment split provisions of the RSA Regulations, done any of the following things:
  - (a) opened a new RSA for the non-member spouse;
  - (b) transferred or rolled over an amount equal to the value that the non-member spouse would be required to have if a new RSA had been opened for the non-member spouse under the payment split provisions of the RSA Regulations;
  - (c) paid to the non-member spouse an amount that is at least the amount to which the non-member spouse is entitled in respect of the superannuation interest at the time of the payment.
- (4) In this section:

*payment split provisions of the RSA Regulations* means the provisions of the RSA Regulations (other than Division 4A.4) dealing with superannuation interests that are subject to a payment split.

*payment split provisions of the SIS Regulations* means the provisions of the SIS Regulations (other than Division 7A.3) dealing with superannuation interests that are subject to a payment split.

# EXPOSURE DRAFT

**Part 3** Payments that are not splittable payments: payments made in particular circumstances

**Division 3** When the payment relates to a superannuation interest that is not a percentage-only interest

## Section 22

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### **Subdivision B—New interest otherwise created, or amount otherwise transferred or rolled over or paid, by trustee, or separate entitlement arising, in satisfaction of non-member spouse’s entitlement under agreement or order**

#### **22 Requirements of this Subdivision**

- (1) The requirements of this Subdivision are met for a non-member spouse’s entitlement under a particular superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest if:
  - (a) the interest:
    - (i) is not a percentage-only interest; and
    - (ii) is in a superannuation fund or an approved deposit fund; and
  - (b) either of the following sections applies for the interest:
    - (i) section 23 (main circumstances);
    - (ii) section 24 (public sector superannuation schemes in which a separate entitlement arises for the non-member spouse).

Note 1: The superannuation interest could be, for example, an interest in respect of which benefits are payable as an allocated pension or a market linked pension.

Note 2: Section 23 will apply if any of its subsections applies for the interest.

- (2) However, for the purposes of subparagraph (1)(b)(i), section 23 will not apply for the superannuation interest if:
  - (a) the interest is a defined benefit interest; and
  - (b) the governing rules of the relevant eligible superannuation plan provide for the reduction of the benefit payable to any other member of the plan (other than the member spouse or a reversionary beneficiary of the member spouse) as a result of:
    - (i) the creation of a new interest for the non-member spouse; or
    - (ii) the transfer or rollover of an amount to be held for the benefit of the non-member spouse; or
    - (iii) the payment of an amount to the non-member spouse.

#### **23 Main circumstances when this Subdivision applies**

*Not a defined benefit interest in a SMSF—trustee creates new interest, or transfers or rolls over an amount, with a value at least as much as the non-member spouse’s entitlement*

- (1) This section applies for the superannuation interest if:
  - (a) the interest is not a defined benefit interest in a self managed superannuation fund; and
  - (b) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse’s entitlement under the agreement or order and under the governing rules of the plan, done either of the following things:
    - (i) created a new interest in the plan for the non-member spouse with a value of at least the value of the non-member spouse’s entitlement for the superannuation interest at the time the new interest is created;

# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
When the payment relates to a superannuation interest that is not a percentage-only interest **Division 3**

## Section 23

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- (ii) transferred or rolled over to another superannuation fund or an RSA an amount, to be held for the benefit of the non-member spouse, with a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time the amount is transferred or rolled over.

*Defined benefit interest in a SMSF—trustee transfers or rolls over an amount, with a value at least as much as the non-member spouse's entitlement*

- (2) This section applies for the superannuation interest if:
  - (a) the interest is a defined benefit interest in a self managed superannuation fund; and
  - (b) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse's entitlement under the agreement or order and under the governing rules of the plan, transferred or rolled over to another superannuation fund or an RSA an amount:
    - (i) to be held for the benefit of the non-member spouse; and
    - (ii) with a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time the amount is transferred or rolled over.

*Non-member spouse satisfies relevant condition of release and trustee pays that spouse an amount equal to the non-member spouse's entitlement*

- (3) This section applies for the superannuation interest if:
  - (a) the interest is in a regulated superannuation fund, an exempt public sector superannuation scheme or an approved deposit fund; and
  - (b) the non-member spouse has satisfied a relevant condition of release in relation to the interest; and
  - (c) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount equal to the value of the non-member spouse's entitlement for the superannuation interest at the time of the payment.

*Member spouse being paid a pension and trustee pays the non-member spouse an amount equal to the non-member spouse's entitlement*

- (4) This section applies for the superannuation interest if:
  - (a) the interest is in a regulated superannuation fund, an exempt public sector superannuation scheme or an approved deposit fund; and
  - (b) at the operative time in relation to the agreement or order, the member spouse was being paid a pension in respect of the interest; and
  - (c) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount equal to the value of the non-member spouse's entitlement for the superannuation interest at the time of the payment.

# EXPOSURE DRAFT

**Part 3** Payments that are not splittable payments: payments made in particular circumstances

**Division 3** When the payment relates to a superannuation interest that is not a percentage-only interest

## Section 24

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*Trustee pays the non-member spouse an amount equal to the non-member spouse's entitlement*

- (5) This section applies for the superannuation interest if:
- (a) the interest is in a superannuation fund that is neither a regulated superannuation fund nor an exempt public sector superannuation scheme; and
  - (b) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount equal to the value of the non-member spouse's entitlement for the superannuation interest at the time of the payment.

*Trustee need not have done anything mentioned in this section*

- (6) To avoid doubt, nothing in a subsection of this section requires the trustee of the relevant eligible superannuation plan to do something mentioned in that subsection.

## **24 Other circumstance—public sector superannuation schemes in which a separate entitlement arises for the non-member spouse**

This section applies for the superannuation interest if:

- (a) the interest is in a public sector superannuation scheme (the *original scheme*); and
- (b) at or after the operative time in relation to the agreement or order, and under the governing rules of the original scheme or under the governing rules of another public sector superannuation scheme, a separate entitlement to benefits has arisen for the non-member spouse:
  - (i) in respect of the non-member spouse's entitlement under the agreement or order; and
  - (ii) with a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time the separate entitlement arose; and
- (c) where the interest is a defined benefit interest—the governing rules of the original scheme do not provide for the reduction of the benefit payable to any other member of the scheme (other than the member spouse or a reversionary beneficiary of the member spouse) as a result of the non-member spouse's separate entitlement.

## **25 Meaning of value of the non-member spouse's entitlement**

- (1) In this Subdivision, the *value of the non-member spouse's entitlement* for the superannuation interest at the time (the *termination time*) when the trustee carries out an action described in section 23, or when a separate entitlement arises for the non-member spouse as described in section 24, is:
- (a) if a base amount applies in relation to the interest—the value calculated under subsection (2) or (3) of this section; or
  - (b) if, under subparagraph 90XJ(1)(c)(iii) or 90YN(1)(c)(iii), or paragraph 90XT(1)(b) or 90YY(1)(b), of the Act, a specified percentage is

# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
When the payment relates to a superannuation interest that is not a percentage-only interest **Division 3**

## Section 25

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to apply to all splittable payments in respect of the interest—the value calculated under subsection (4) of this section.

*Value—if a base amount applies in relation to the interest*

- (2) For the purposes of paragraph (1)(a), if:
- (a) the termination time occurs before the first payment, that apart from this section would be a splittable payment, becomes payable in respect of the superannuation interest; or
  - (b) one or more payments, that apart from this section would be splittable payments, become payable in respect of the superannuation interest after the termination time, and the amount of the first such payment exceeds:
    - (i) if there is an adjusted base amount applicable to the non-member spouse at the termination time—the sum of the adjusted base amount and the amount of any fees payable by the non-member spouse under section 95; or
    - (ii) otherwise—the sum of the base amount applicable to the non-member spouse at the termination time and the amount of any fees payable by the non-member spouse under section 95;

the **value of the non-member spouse's entitlement** for the interest at the termination time is, as the case requires:

- (c) the base amount specified by, or calculated in accordance with a method specified by, the relevant agreement or order; or
  - (d) the base amount allocated to the non-member spouse under subsection 90XT(4) or 90YY(5) of the Act; or
  - (e) the adjusted base amount applicable to the non-member spouse at the termination time.
- (3) For the purposes of paragraph (1)(a), if neither paragraph (2)(a) nor (b) applies for the superannuation interest, the **value of the non-member spouse's entitlement** for the interest at the termination time is:

$$\left( \text{Proportion of splittable payments} \times \text{Value} \right) - \text{Fees}$$

where:

**proportion of splittable payments** means the proportion of each second and subsequent splittable payment that the non-member spouse would be entitled to be paid under Part 7.

**value** means:

- (a) for a superannuation interest in a self managed superannuation fund—the value of the interest at the termination time, determined by the method the court would consider appropriate if it were determining the value of the interest under paragraph 90XT(2)(b) or 90YY(2)(b) of the Act; or
- (b) otherwise—the value of the superannuation interest, being the amount in relation to the interest at the termination time, calculated under Division 2 of Part 6 of this instrument as if references in that Division to ‘the relevant date’ were references to ‘the termination time’.

# EXPOSURE DRAFT

**Part 3** Payments that are not splittable payments: payments made in particular circumstances

**Division 3** When the payment relates to a superannuation interest that is not a percentage-only interest

## Section 25

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*fees* means the amount of any fees payable by the non-member spouse under section 95.

*Value—specified percentage is to apply to all splittable payments in respect of the interest*

- (4) For the purposes of paragraph (1)(b), the **value of the non-member spouse's entitlement** for the interest at the termination time is equal to:

$$\text{Default amount} \times \frac{\text{Specified percentage}}{\text{(see paragraph (1)(b))}} - \frac{\text{Any fees payable by the non-member spouse under section 59}}{\text{spouse under section 59}}$$

where:

**default amount** means:

- (a) if the entitlement is in respect of an interest that is neither:
  - (i) an accumulation interest (other than a partially vested accumulation interest); nor
  - (ii) an interest in a self managed superannuation fund;the amount in relation to the interest at the termination time that a court would determine under Part 6; or
- (b) if the entitlement is in respect of an accumulation interest other than:
  - (i) a partially vested accumulation interest; or
  - (ii) an interest in a self managed superannuation fund;the amount in relation to the interest at the termination time that a court would determine under Part 6 if item 3 of the table in section 52, and subsection 54(2), applied for the interest; or
- (c) if the entitlement is in respect of an interest in a self managed superannuation fund—the value of the interest at the termination time, determined by the method that the court would consider appropriate if it were determining the value of the interest under paragraph 90XT(2)(b) or 90YY(2)(b) of the Act.

# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
When the payment relates to a superannuation interest that is a percentage-only interest **Division 4**

Section 26

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## **Division 4—When the payment relates to a superannuation interest that is a percentage-only interest**

### **Subdivision A—New interest created, or amount transferred or rolled over or paid, by trustee, or separate entitlement arising, in satisfaction of non-member spouse’s entitlement under agreement or order**

#### **26 Requirements of this Subdivision**

- (1) The requirements of this Subdivision are met for a non-member spouse’s entitlement under a particular superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest if:
  - (a) the interest:
    - (i) is a percentage-only interest; and
    - (ii) is in a superannuation fund or an approved deposit fund; and
  - (b) either of the following sections applies for the interest:
    - (i) section 27 (main circumstances);
    - (ii) section 28 (public sector superannuation schemes in which a separate entitlement arises for the non-member spouse).

Note: Section 27 will apply if any of its subsections applies for the interest.

- (2) However, for the purposes of subparagraph (1)(b)(i), section 27 will not apply for the superannuation interest if:
  - (a) the interest is a defined benefit interest; and
  - (b) the governing rules of the relevant eligible superannuation plan provide for the reduction of the benefit payable to any other member of the plan (other than the member spouse or a reversionary beneficiary of the member spouse) as a result of:
    - (i) the creation of a new interest for the non-member spouse; or
    - (ii) the transfer or rollover of an amount to be held for the benefit of the non-member spouse; or
    - (iii) the payment of an amount to the non-member spouse.

#### **27 Main circumstances when this Subdivision applies**

*Trustee creates new interest, or transfers or rolls over an amount, with a value at least as much as the non-member spouse’s entitlement*

- (1) This section applies for the superannuation interest if:
  - (a) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse’s entitlement under the agreement or order and under the governing rules of the plan, done either of the following things:
    - (i) created a new interest in the plan for the non-member spouse with a value of at least the value of the non-member spouse’s entitlement for the superannuation interest at the time the new interest is created;
    - (ii) transferred or rolled over to another superannuation fund or an RSA an amount, to be held for the benefit of the non-member spouse, with

# EXPOSURE DRAFT

**Part 3** Payments that are not splittable payments: payments made in particular circumstances

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## Section 27

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a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time the amount is transferred or rolled over; and

- (b) the interest was in the payment phase at the time the thing was done.

*Non-member spouse satisfies relevant condition of release and trustee pays that spouse an amount at least equal to the non-member spouse's entitlement*

- (2) This section applies for the superannuation interest if:

- (a) the interest is in a regulated superannuation fund, an exempt public sector superannuation scheme or an approved deposit fund; and
- (b) the non-member spouse has satisfied a relevant condition of release in relation to the interest; and
- (c) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount with a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time of the payment; and
- (d) the interest was in the payment phase at the time of the payment.

*Member spouse being paid a pension and trustee pays the non-member spouse an amount at least equal to the non-member spouse's entitlement*

- (3) This section applies for the superannuation interest if:

- (a) the interest is in a regulated superannuation fund, an exempt public sector superannuation scheme or an approved deposit fund; and
- (b) at the operative time in relation to the agreement or order, the member spouse was being paid a pension in respect of the interest; and
- (c) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount with a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time of the payment.

*Trustee pays the non-member spouse an amount equal to the non-member spouse's entitlement*

- (4) This section applies for the superannuation interest if:

- (a) the interest is in a superannuation fund that is neither a regulated superannuation fund nor an exempt public sector superannuation scheme; and
- (b) the trustee of the relevant eligible superannuation plan has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount with a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time of the payment; and
- (c) the interest was in the payment phase at the time of the payment.



# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
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Section 28

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*Trustee need not have done anything mentioned in this section*

- (5) To avoid doubt, nothing in a subsection of this section requires the trustee of the relevant eligible superannuation plan to do something mentioned in that subsection.

## **28 Other circumstance—public sector superannuation schemes in which a separate entitlement arises for the non-member spouse**

This section applies for the superannuation interest if:

- (a) the interest is in a public sector superannuation scheme (the *original scheme*); and
- (b) at or after the operative time in relation to the agreement or order, and under the governing rules of the original scheme or under the governing rules of another public sector superannuation scheme, a separate entitlement to benefits has arisen for the non-member spouse:
  - (i) in respect of the non-member spouse's entitlement under the agreement or order; and
  - (ii) with a value of at least the value of the non-member spouse's entitlement for the superannuation interest at the time the separate entitlement arose; and
- (c) the interest was in the payment phase at the time the separate entitlement arose; and
- (d) where the interest is a defined benefit interest—the governing rules of the original scheme do not provide for the reduction of the benefit payable to any other member of the scheme (other than the member spouse or a reversionary beneficiary of the member spouse) as a result of the non-member spouse's separate entitlement.

## **29 Meaning of *value of the non-member spouse's entitlement***

- (1) In this Subdivision, the *value of the non-member spouse's entitlement* for the superannuation interest at a particular time is:
- (a) the value at that time calculated in accordance with Part 2 of Schedule 2, if:
    - (i) the superannuation agreement or flag lifting agreement identified the percentage that was to apply for the purposes of subparagraph 90XJ(1)(b)(i) or 90YN(1)(b)(i) of the Act; and
    - (ii) the splitting order was made under paragraph 90XT(1)(c) or 90YY(1)(c) of the Act; or
  - (b) the value at that time calculated in accordance with Part 3 of Schedule 2, if:
    - (i) the superannuation agreement or flag lifting agreement identified a percentage that was to apply for the purposes of subparagraph 90XJ(1)(b)(ii) or 90YN(1)(b)(ii) of the Act; and
    - (ii) the splitting order was made under paragraph 90XT(1)(b) or 90YY(1)(b) of the Act.

# EXPOSURE DRAFT

**Part 3** Payments that are not splittable payments: payments made in particular circumstances

**Division 4** When the payment relates to a superannuation interest that is a percentage-only interest

## Section 30

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### **Subdivision B—New deferred annuity established, or amount transferred or rolled over or paid, by trustee of deferred annuity in satisfaction of non-member spouse’s entitlement under agreement or order**

#### **30 Requirements of this Subdivision**

The requirements of this Subdivision are met for a non-member spouse’s entitlement under a particular superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest if:

- (a) the interest:
  - (i) is a percentage-only interest; and
  - (ii) is in a superannuation annuity that is a deferred annuity; and
- (b) section 31 applies for the interest.

Note: To see if section 31 applies, see subsection 31(1), (2), (3) or (5).

#### **31 Circumstances when this Subdivision applies**

*Non-member spouse satisfies relevant condition of release and trustee pays that spouse an amount equal to that spouse’s entitlement*

- (1) This section applies for the superannuation interest if:
  - (a) the non-member spouse has satisfied a relevant condition of release in relation to the interest; and
  - (b) the trustee of the superannuation annuity has, in respect of the non-member spouse’s entitlement under the agreement or order, paid to the non-member spouse an amount equal to the value of the non-member spouse’s entitlement for the superannuation interest at the time of the payment; and
  - (c) the interest is in the growth phase at the time of the payment.

*Trustee transfers or rolls over an amount with a value equal to the non-member spouse’s entitlement*

- (2) This section applies for the superannuation interest if:
  - (a) the trustee of the superannuation annuity has, in respect of the non-member spouse’s entitlement under the agreement or order, transferred or rolled over to a superannuation fund or an RSA an amount:
    - (i) to be held for the benefit of the non-member spouse; and
    - (ii) with a value equal to the value of the non-member spouse’s entitlement for the superannuation interest at the time the amount is transferred or rolled over; and
  - (b) the interest is in the growth phase at the time the amount is transferred or rolled over.

*Trustee establishes new deferred annuity with a value equal to the non-member spouse’s entitlement*

- (3) This section applies for the superannuation interest if:

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Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
When the payment relates to a superannuation interest that is a percentage-only interest **Division 4**

## Section 31

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- (a) the trustee of the superannuation annuity has, in respect of the non-member spouse's entitlement under the agreement or order, established a new deferred annuity that:
    - (i) provides for the payment of benefits to the non-member spouse; and
    - (ii) commences no earlier than the time when, if the new deferred annuity were taken to be an approved deposit fund for the purposes of Part 6 of the SIS Regulations, that Part would permit or require the payment of benefits from the approved deposit fund; and
    - (iii) has a value equal to the value of the non-member spouse's entitlement for the superannuation interest at the time the new deferred annuity is established; and
  - (b) the interest is in the growth phase at the time the new deferred annuity is established.
- (4) For the purposes of (but without limiting) subsection (3):
- (a) the trustee of the superannuation annuity is taken to have established a new deferred annuity for the benefit of the non-member spouse if the trustee has entered into an agreement with the non-member spouse to provide such an annuity for the non-member spouse's benefit; and
  - (b) the new deferred annuity is taken to have been established on the date that agreement is entered into.

*Trustee establishes new annuity, that is a non-commutable income stream, with a value equal to the non-member spouse's entitlement*

- (5) This section applies for the superannuation interest if:
- (a) the trustee of the superannuation annuity has, in respect of the non-member spouse's entitlement under the agreement or order, established a new annuity for the benefit of the non-member spouse that:
    - (i) is a non-commutable income stream (within the meaning of the SIS Regulations); and
    - (ii) has a value equal to the value of the non-member spouse's entitlement for the superannuation interest at the time the new annuity is established; and
  - (b) the interest is in the growth phase at the time the new annuity is established.
- (6) For the purposes of (but without limiting) subsection (5):
- (a) the trustee of the superannuation annuity is taken to have established a new annuity (being an annuity that is a non-commutable income stream) for the benefit of the non-member spouse if:
    - (i) the trustee has entered into an agreement with the non-member spouse to provide such an annuity for the non-member spouse's benefit; or
    - (ii) the trustee has paid to another annuity provider an amount equal to the value of the non-member spouse's entitlement for the superannuation interest at the time the payment is made, for the purpose of that annuity provider providing such an annuity for the non-member spouse's benefit; and
  - (b) the new annuity is taken to have been established:

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## Section 32

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- (i) if subparagraph (a)(i) applies—on the date the agreement between the trustee and the non-member spouse is entered into; or
- (ii) if subparagraph (a)(ii) applies—on the date the amount mentioned in that subparagraph is paid to the annuity provider by the trustee.

*Trustee need not have done anything mentioned in this section*

- (7) To avoid doubt, nothing in a subsection of this section requires the trustee of a superannuation annuity to do something mentioned in that subsection.

### **32 Meaning of *value of the non-member spouse's entitlement***

In this Subdivision, the *value of the non-member spouse's entitlement* for the superannuation interest at the time (the *termination time*) when the trustee carries out an action described in subsection 31(1), (2), (3) or (5) is equal to:

$$\text{Account balance of the superannuation annuity at the termination time} \times \text{Specified percentage} - \text{Any fees payable by the non-member spouse under section 59}$$

### **Subdivision C—New annuity established or amount transferred or rolled over or paid by trustee of a superannuation annuity (other than under Subdivision B) in satisfaction of non-member spouse's entitlement under agreement or order**

### **33 Requirements of this Subdivision**

The requirements of this Subdivision are met for a non-member spouse's entitlement under a particular superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest if:

- (a) the interest is a percentage-only interest and the interest is in a superannuation annuity that is one of the following:
  - (i) an allocated annuity;
  - (ii) a market linked annuity;
  - (iii) a fixed term annuity;
  - (iv) a lifetime annuity, including a lifetime annuity that is payable for the lives of more than one person; and
- (b) section 34 applies for the interest.

Note: To see if section 34 applies, see subsection 34(1), (2) or (3).

### **34 Circumstances when this Subdivision applies**

*Trustee pays non-member spouse an amount equal to the value of the non-member spouse's entitlement*

- (1) This section applies for the superannuation interest if:
  - (a) the trustee of the superannuation annuity has, in respect of the non-member spouse's entitlement under the agreement or order, paid to the non-member spouse an amount equal to the value of the non-member spouse's entitlement for the superannuation interest at the time of the payment; and

# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
When the payment relates to a superannuation interest that is a percentage-only interest **Division 4**

Section 34

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- (b) the interest:
  - (i) was in the payment phase at the operative time in relation to the agreement or order; and
  - (ii) is in the payment phase at the time of the payment.

*Trustee transfers or rolls over an amount with a value equal to the non-member spouse's entitlement*

- (2) This section applies for the superannuation interest if:
  - (a) the trustee of the superannuation annuity has, in respect of the non-member spouse's entitlement under the agreement or order, transferred or rolled over to a superannuation fund or an RSA an amount to be held for the benefit of the non-member spouse; and
  - (b) the value of that amount is equal to the value of the non-member spouse's entitlement for the superannuation interest at the time that amount is transferred or rolled over; and
  - (c) the interest is in the payment phase at the time that amount is transferred or rolled over.

*Trustee establishes new annuity with a value equal to the non-member spouse's entitlement*

- (3) This section applies for the superannuation interest if:
  - (a) the trustee of the superannuation annuity has, in respect of the non-member spouse's entitlement under the agreement or order, established any of the following new annuities (an **eligible annuity**) for the benefit of the non-member spouse:
    - (i) an allocated annuity;
    - (ii) a market linked annuity;
    - (iii) a fixed term annuity;
    - (iv) a lifetime annuity; and
  - (b) the new annuity has a value equal to the value of the non-member spouse's entitlement for the superannuation interest at the time the new annuity is established; and
  - (c) the interest is in the payment phase at the time the new annuity is established.

- (4) For the purposes of (but without limiting) subsection (3):
  - (a) the trustee of the superannuation annuity is taken to have established an eligible annuity for the benefit of the non-member spouse if either of the following things have occurred:
    - (i) the trustee has entered into an agreement with the non-member spouse to provide an eligible annuity for the benefit of the non-member spouse;
    - (ii) the trustee has paid to another annuity provider an amount equal to the value of the non-member spouse's entitlement for the superannuation interest at the time the payment is made, for the purpose of that annuity provider providing an eligible annuity for the benefit of the non-member spouse; and

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**Part 3** Payments that are not splittable payments: payments made in particular circumstances

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## Section 35

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- (b) the eligible annuity is taken to have been established:
  - (i) if subparagraph (a)(i) applies—on the date the agreement between the trustee and the non-member spouse is entered into; or
  - (ii) if subparagraph (a)(ii) applies—on the date the amount mentioned in subparagraph (a)(ii) is paid to the annuity provider by the trustee.

*Trustee need not have done anything mentioned in this section*

- (5) To avoid doubt, nothing in a subsection of this section requires the trustee of a superannuation annuity to do something mentioned in that subsection.

### 35 Meaning of *value of the non-member spouse's entitlement*

- (1) In this Subdivision, the ***value of the non-member spouse's entitlement*** for a superannuation interest at the time (the ***termination time***) when the trustee carries out an action described in subsections 34(1), (2) or (3) is as described in subsection (2), (3) or (4) of this section.

*Superannuation interest is in an allocated annuity or market linked annuity*

- (2) If the superannuation interest is in a superannuation annuity that is an allocated annuity or a market linked annuity, the ***value of the non-member spouse's entitlement*** for the interest at the termination time is equal to:

$$\text{Account balance of the annuity at the termination time} \times \text{Specified percentage} - \text{Any fees payable by the non-member spouse under section 59}$$

*Superannuation interest is in a fixed term annuity or a lifetime annuity, and non-member spouse's entitlement arises under an agreement*

- (3) If:
  - (a) the superannuation interest is in a superannuation annuity that is a fixed term annuity or a lifetime annuity; and
  - (b) the non-member spouse's entitlement arises under a superannuation agreement or flag lifting agreement;

the ***value of the non-member spouse's entitlement*** for the interest at the termination time is calculated by a method agreed to between the spouses.

*Superannuation interest is in a fixed term annuity or a lifetime annuity, and non-member spouse's entitlement arises under a splitting order*

- (4) If:
  - (a) the superannuation interest is in a superannuation annuity that is a fixed term annuity or a lifetime annuity; and
  - (b) the non-member spouse's entitlement arises under a splitting order;the ***value of the non-member spouse's entitlement*** for the interest at the termination time is calculated by a method determined by the court.

# EXPOSURE DRAFT

Payments that are not splittable payments: payments made in particular circumstances **Part 3**  
When the payment by the member spouse is in satisfaction of the non-member spouse's entitlement  
under agreement or order **Division 5**

Section 36

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## **Division 5—When the payment by the member spouse is in satisfaction of the non-member spouse's entitlement under agreement or order**

### **36 Requirements of this Division**

- (1) The requirements of this Division are met for a non-member spouse's entitlement under a particular superannuation agreement, flag lifting agreement or splitting order in respect of a superannuation interest if subsection (2) or (3) applies for the interest.
- (2) This subsection applies for the superannuation interest if:
  - (a) the interest is in a regulated superannuation fund, an exempt public sector superannuation scheme, an approved deposit fund, an RSA or a superannuation annuity; and
  - (b) either of the following has happened:
    - (i) if the non-member spouse has satisfied a relevant condition of release in relation to the interest—the member spouse has paid to the non-member spouse an amount in satisfaction of the non-member spouse's entitlement in respect of the interest;
    - (ii) otherwise—the member spouse has paid to another regulated superannuation fund, exempt public sector superannuation scheme or an RSA, an amount, to be held for the benefit of the non-member spouse, in satisfaction of the non-member spouse's entitlement in respect of the interest; and
  - (c) the interest was in the growth phase at the time of the payment; and
  - (d) after the payment mentioned in paragraph (b), a notice in accordance with Form 1 in Schedule 1, signed by the non-member spouse in respect of the interest, has been served on the trustee of the plan.
- (3) This subsection applies for the superannuation interest if:
  - (a) the interest is in a superannuation fund that is neither a regulated superannuation fund nor an exempt public sector superannuation scheme; and
  - (b) the member spouse has paid to the non-member spouse an amount in satisfaction of the non-member spouse's entitlement in respect of the interest; and
  - (c) the interest was in the growth phase at the time of the payment; and
  - (d) after the payment, a notice in accordance with Form 1 in Schedule 1, signed by the non-member spouse in respect of the interest, has been served on the trustee of the plan.

# EXPOSURE DRAFT

**Part 4** Payment splitting or flagging by agreement

**Division 1** Superannuation interest that is not a percentage-only interest

Section 37

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## **Part 4—Payment splitting or flagging by agreement**

### **Division 1—Superannuation interest that is not a percentage-only interest**

#### **37 Application of this Division—agreements specifying a base amount or method for calculating a base amount**

- (1) This Division applies to a payment split under a superannuation agreement or flag lifting agreement in relation to a superannuation interest of a member spouse if:
  - (a) the interest is not a percentage-only interest; and
  - (b) the agreement specifies an amount or a method in accordance with subparagraph 90XJ(1)(c)(i) or (ii), or 90YN(1)(c)(i) or (ii), of the Act.

Note: Paragraph (b) means the agreement is specifying a base amount, or method for calculating a base amount, in relation to the interest.

- (2) For the purposes of paragraph 90XJ(4)(b) or 90YN(4)(b) of the Act, this Division enables the calculation of the amount that the non-member spouse is entitled to be paid in respect of each splittable payment that becomes payable in respect of the interest.

#### **38 Entitlement of non-member spouse under the agreement—superannuation interest not in existence or in growth phase**

- (1) This section applies if the superannuation interest:
  - (a) is not a small superannuation accounts interest; and
  - (b) is not in existence at the date of the agreement, or is in the growth phase at the date of the agreement and is not in the payment phase at the date when the agreement is served on the trustee under section 90XI or 90YM of the Act.
- (2) The amount (if any) that the non-member spouse is entitled to be paid in respect of the splittable payment is the amount calculated under Division 2 of Part 7.

#### **39 Entitlement of non-member spouse under the agreement—superannuation interest in payment phase**

- (1) This section applies if the superannuation interest:
  - (a) is not a small superannuation accounts interest; and
  - (b) is in the payment phase at the date of the agreement or the date when the agreement is served on the trustee under section 90XI or 90YM of the Act.
- (2) The amount that the non-member spouse is entitled to be paid in respect of the splittable payment is the amount calculated under Division 3 of Part 7.



# EXPOSURE DRAFT

Payment splitting or flagging by agreement **Part 4**  
Superannuation interest that is a percentage-only interest **Division 2**

Section 40

## Division 2—Superannuation interest that is a percentage-only interest

### 40 Application of this Division—agreements specifying a percentage

- (1) This Division applies to a payment split under a superannuation agreement or flag lifting agreement in relation to a superannuation interest of a member spouse if:
  - (a) the interest is a percentage-only interest; and
  - (b) the agreement specifies a percentage that is to apply for the purposes of subparagraph 90XJ(1)(b)(i) or 90YN(1)(b)(i) of the Act.
- (2) For the purposes of paragraph 90XJ(4)(b) or 90YN(4)(b) of the Act, this Division enables the calculation of the amount that the non-member spouse is entitled to be paid in respect of a splittable payment that becomes payable in respect of the interest.

### 41 Entitlement of non-member spouse under the agreement—splittable payment payable in respect of superannuation interest (other than an interest in a superannuation annuity)

If the superannuation interest is not an interest in a superannuation annuity, the amount that the non-member spouse is entitled to be paid in respect of the splittable payment is:

$$\left( \frac{\text{Accrued benefit multiple at separation}}{\text{Accrued benefit multiple at payment}} \times \text{Agreement percentage} \right) \times \text{Splittable payment}$$

where:

***accrued benefit multiple at separation*** means the member spouse's accrued benefit multiple, as defined in the governing rules of the eligible superannuation plan in which the superannuation interest is held, at the date when the member spouse and non-member spouse separated or, if there have been 2 or more separations, at the date of the most recent separation.

***accrued benefit multiple at payment*** means the member spouse's accrued benefit multiple, as defined in the governing rules of the eligible superannuation plan in which the superannuation interest is held, at the date when the splittable payment becomes payable in respect of the superannuation interest.

***agreement percentage*** means the percentage specified in the agreement.

***splittable payment*** means the amount of the splittable payment.

### 42 Entitlement of non-member spouse under the agreement—splittable payment payable in respect of interest in a superannuation annuity

If the superannuation interest is an interest in a superannuation annuity, the amount that the non-member spouse is entitled to be paid in respect of the splittable payment is:

# EXPOSURE DRAFT

**Part 5** Payment splitting or flagging by court order

**Division 3** Miscellaneous matters relating to payment splitting or flagging by agreement

## Section 43

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Agreement percentage × Splittable payment

where:

*agreement percentage* means the percentage specified in the agreement.

*splittable payment* means the amount of the splittable payment.

### **Division 3—Miscellaneous matters relating to payment splitting or flagging by agreement**

#### **43 Superannuation interests in excess of low rate cap amount—total withdrawal value**

For the purposes of subsections 90XQ(3) and 90YV(3) of the Act, the *total withdrawal value* for all the superannuation interests of a member spouse at a particular time is the sum of the withdrawal benefits for each superannuation interest the member spouse has in any eligible superannuation plan at that time.

## **Part 5—Payment splitting or flagging by court order**

### **Division 1—Simplified outline**

#### **44 Simplified outline of this Part**

Before making a splitting order in relation to a superannuation interest of the member spouse, the court must make a determination about the value of the interest.

If the interest is not a percentage-only interest and not a small superannuation accounts interest:

- (a) Subdivision A of Division 2 of this Part explains which Division of Part 6 is used to determine that value, depending on whether the interest is in the growth phase or the payment phase; and
- (b) Subdivision B of Division 2 of this Part explains which Division of Part 7 is used to calculate the amount the non-member spouse is entitled to be paid under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act in relation to the interest.

If the interest is not a percentage-only interest but is a small superannuation accounts interest, Subdivision A of Division 2 of this Part explains how to determine the value of the interest.

If the interest is a percentage-only interest, Division 3 of this Part explains how to calculate the amount the non-member spouse is entitled to be paid under a splitting order made under paragraph 90XT(1)(c) or 90YY(1)(c) of the Act in relation to the interest.

# EXPOSURE DRAFT

Payment splitting or flagging by court order **Part 5**  
Superannuation interest that is not a percentage-only interest **Division 2**

Section 45

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## **Division 2—Superannuation interest that is not a percentage-only interest**

### **Subdivision A—Determining the value of the superannuation interest of the member spouse**

#### **45 Determining the value of certain superannuation interests of member spouses**

- (1) For the purposes of paragraph 90XT(2)(a) or 90YY(2)(a) of the Act, the court must determine an amount in relation to a superannuation interest of the member spouse that is not a percentage-only interest:
  - (a) if the interest is in the growth phase at the relevant date—under Division 1 of Part 6 of this instrument; and
  - (b) if the interest is in the payment phase at the relevant date—under Division 2 of Part 6 of this instrument.
- (2) However, subsection (1) does not apply if the superannuation interest is:
  - (a) a small superannuation accounts interest; or
  - (b) an interest in a self managed superannuation fund; or
  - (c) an interest in a regulated superannuation fund in relation to which the trustee of the fund has, under section 1017B of the *Corporations Act 2001* (as modified, if necessary, as set out in Part 10 of Schedule 10A to the *Corporations Regulations 2001*), given notice to each member of the fund that the fund is to be reconstructed or terminated.

Note 1: The determination mentioned in subsection (1) is taken to be the value of the superannuation interest of the member spouse (see subsection 90XT(2A) or 90YY(3) of the Act). The determination must be made before the court makes an order under subsection 90XT(1) or 90YY(1) of the Act (about splitting orders) for the benefit of the non-member spouse in relation to the superannuation interest.

Note 2: For a determination of the value of a small superannuation accounts interest, see section 46.

Note 3: For a superannuation interest mentioned in paragraph (2)(b) or (c), the court will not determine the value of the member spouse's superannuation interest under this instrument. Instead, the court will do so by such method as the court considers appropriate (see paragraph 90XT(2)(b) or 90YY(2)(b) of the Act).

#### **46 Determining the value of small superannuation accounts interests of member spouses**

- (1) This section applies in relation to a superannuation interest of the member spouse that:
  - (a) is not a percentage-only interest; and
  - (b) is a small superannuation accounts interest.
- (2) For the purposes of paragraph 90XT(2)(a) or 90YY(2)(a) of the Act, the court must determine an amount in relation to the interest that is the account balance at the relevant date that the Commissioner of Taxation would be required to transfer to:
  - (a) a specified RSA, for the benefit of the member spouse; or
  - (b) the trustee of a complying fund, for the benefit of the member spouse;

# EXPOSURE DRAFT

## Part 5 Payment splitting or flagging by court order

### Division 3 Superannuation interest that is a percentage-only interest

#### Section 47

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if the Commissioner had received a transfer request from the member spouse under section 61 of the *Small Superannuation Accounts Act 1995*.

Note: The determination is taken to be the value of the superannuation interest of the member spouse (see subsection 90XT(2A) or 90YY(3) of the Act). The court must make the determination before making a splitting order for the benefit of the non-member spouse in relation to the superannuation interest.

(3) In this section:

**complying fund** means a fund that passes the compliance test in subsection 61(2) of the *Small Superannuation Accounts Act 1995*.

### **Subdivision B—Calculating the amount the non-member spouse is entitled to be paid in respect of certain superannuation interests of the member spouse**

#### **47 Entitlement of non-member spouse under a splitting order—interests other than small superannuation accounts interests**

For the purposes of subparagraph 90XT(1)(a)(i) or 90YY(1)(a)(i) of the Act for a superannuation interest that is not a percentage-only interest and is not a small superannuation accounts interest, the amount that the non-member spouse is entitled to be paid under a splitting order whenever a splittable payment becomes payable in respect of the interest is:

- (a) if the interest is in the growth phase at the date of the splitting order—the amount calculated under Division 2 of Part 7 of this instrument; and
- (b) if the interest is in the payment phase at the date of the splitting order—the amount calculated under Division 3 of Part 7 of this instrument.

### **Division 3—Superannuation interest that is a percentage-only interest**

#### **48 Application of this Division**

For the purposes of subparagraph 90XT(1)(c)(i) or 90YY(1)(c)(i) of the Act for a superannuation interest that is a percentage-only interest, this Division sets out how to calculate the amount that the non-member spouse is entitled to be paid under a splitting order for each splittable payment that becomes payable in respect of the interest.

#### **49 Entitlement of non-member spouse under the order—superannuation interest (other than an interest in a superannuation annuity)**

If the superannuation interest is not an interest in a superannuation annuity, the amount that the non-member spouse is entitled to be paid in respect of the splittable payment is:

$$\left( \frac{\text{Accrued benefit multiple at separation}}{\text{Accrued benefit multiple at payment}} \times \frac{\text{Splitting order percentage}}{\text{percentage}} \right) \times \text{Splittable payment}$$

# EXPOSURE DRAFT

Payment splitting or flagging by court order **Part 5**  
Superannuation interest that is a percentage-only interest **Division 3**

Section 50

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where:

*accrued benefit multiple at separation* means the member spouse's accrued benefit multiple, as defined in the governing rules of the eligible superannuation plan in which the superannuation interest is held, at the date when the member spouse and non-member spouse separated or, if there have been 2 or more separations, at the date of the most recent separation.

*accrued benefit multiple at payment* means the member spouse's accrued benefit multiple, as defined in the governing rules of the eligible superannuation plan in which the superannuation interest is held, at the date when the splittable payment becomes payable in respect of the superannuation interest.

*splitting order percentage* means the percentage specified in the splitting order.

*splittable payment* means the amount of the splittable payment.

## **50 Entitlement of non-member spouse under the order—superannuation interest in a superannuation annuity**

If the superannuation interest is an interest in a superannuation annuity, the amount that the non-member spouse is entitled to be paid in respect of the splittable payment is:

Splitting order percentage × Splittable payment

where:

*splitting order percentage* is the percentage specified in the splitting order.

*splittable payment* is the amount of the splittable payment.

# EXPOSURE DRAFT

**Part 6** Determining the value of certain superannuation interests of member spouses

**Division 1** Determining the value of superannuation interests in the growth phase at the relevant date

Section 51

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## **Part 6—Determining the value of certain superannuation interests of member spouses**

### **Division 1—Determining the value of superannuation interests in the growth phase at the relevant date**

#### **51 Simplified outline of this Division**

Section 52 uses a formula to calculate the value of a superannuation interest of the member spouse that is in the growth phase. This value is needed for paragraph 45(1)(a).

The formula in section 52 has a term called the gross value of the superannuation interest at the relevant date. The remaining sections in this Division calculate that gross value.

Note: This Division does not apply to certain kinds of superannuation interests, including percentage-only interests and interests covered by subsection 45(2).

#### **52 Determining the value of superannuation interests in the growth phase at the relevant date**

For the purposes of paragraph 45(1)(a), the amount to be determined by the court in relation to a superannuation interest of the member spouse that:

- (a) is not a percentage-only interest; and
- (b) is in the growth phase at the relevant date;

is calculated as follows:

$$\begin{array}{r} \text{Gross value of the} \\ \text{superannuation interest} \\ \text{at the relevant date} \end{array} - \begin{array}{r} \text{Each earlier relevant amount} \\ \text{payable in respect of} \\ \text{the superannuation interest} \end{array} - \begin{array}{r} \text{Any applicable} \\ \text{surcharge debt} \end{array}$$

where:

***gross value of the superannuation interest at the relevant date*** means the gross value of the superannuation interest calculated under the table at the end of this section.

***each earlier relevant amount payable in respect of the superannuation interest*** means each amount (if any) payable under a payment split:

- (a) applying in relation to a splittable payment in respect of the superannuation interest; and
- (b) having an operative time before the relevant date.

***any applicable surcharge debt*** means:

- (a) if the superannuation interest is a defined benefit interest in a superannuation fund that is not a constitutionally protected fund—the amount of any surcharge debt of the member spouse as stated in the most recent member information statement provided by the fund to the member spouse before the relevant date; or

# EXPOSURE DRAFT

Determining the value of certain superannuation interests of member spouses **Part 6**  
Determining the value of superannuation interests in the growth phase at the relevant date **Division 1**

## Section 53

- (b) if the superannuation interest is in a superannuation fund that is a constitutionally protected fund—the amount stated in any surcharge debt account maintained for the member spouse by the Commissioner of Taxation at the relevant date.

### Working out the gross value of the superannuation interest at the relevant date

| Item | If:  | the interest's gross value is calculated under: |
|------|--|---|
| 1    | the whole of the superannuation interest is a defined benefit interest, the benefit in respect of which is not as described in item 2  | section 53.                                     |
| 2    | the whole of the superannuation interest is a defined benefit interest, the benefit in respect of which is the difference between:<br>(a) the amount of a defined benefit; and<br>(b) any other amount (other than any surcharge that the trustee is liable to pay in respect of the interest);<br>as calculated under the governing rules of the eligible superannuation plan in which the interest is held | section 60.                                     |
| 3    | the whole of the superannuation interest is an accumulation interest (other than a partially vested accumulation interest)   | section 54 or 55.                               |
| 4    | the whole of the superannuation interest is a partially vested accumulation interest   | section 56.                                     |
| 5    | the superannuation interest consists of 2 or more components and either:<br>(a) one or more methods or factors have been approved under section 62 for the superannuation interest; or<br>(b) the gross value of each component would be capable of being determined under this Division if the component were the whole of the superannuation interest  | section 57.                                     |
| 6    | the superannuation interest is the greater of:<br>(a) a defined benefit interest; and<br>(b) an accumulation interest (other than a partially vested accumulation interest)  | section 58.                                     |
| 7    | the superannuation interest is the lesser of:<br>(a) a defined benefit interest; and<br>(b) an accumulation interest (other than a partially vested accumulation interest)   | section 59.                                     |
| 8    | the whole of the superannuation interest is an innovative superannuation interest  | section 61.                                     |

### 53 Gross value—most defined benefit interests

- (1) This section applies for the superannuation interest if item 1 of the table in section 52 applies for the interest.

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## Section 53

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*Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors*

- (2) If:
- (a) under section 62, the Minister has approved one or more methods or factors to be used to determine the gross value of the superannuation interest; and
  - (b) evidence before the court includes the contents of a statement that:
    - (i) was issued by the trustee of the plan in which the interest is held; and
    - (ii) sets out the gross value of the interest as determined using the approved methods or factors;

the **gross value of the superannuation interest at the relevant date** is as set out in the statement.

*Minister has not approved any methods or factors, and there is evidence that the trustee has used the method in Schedule 3*

- (3) If:
- (a) paragraph (2)(a) does not apply; and
  - (b) evidence before the court includes the contents of a statement that:
    - (i) was issued by the trustee of the plan in which the superannuation interest is held; and
    - (ii) sets out the gross value of the interest as determined using the method set out in Schedule 3;

the **gross value of the superannuation interest at the relevant date** is as set out in the statement.

*There is no evidence before the court of the contents of a statement referred to in paragraph (2)(b) or (3)(b)*

- (4) If neither paragraph (2)(b) nor (3)(b) applies, the **gross value of the superannuation interest at the relevant date** is to be determined using:
- (a) if, under section 62, the Minister has approved one or more methods or factors to be used to determine the gross value of the interest—the approved methods or factors; or
  - (b) otherwise—the method set out in Schedule 3.

*Approval of retirement age*

- (5) For the purposes of subsection (2), (3) or (4), the Minister may, by legislative instrument, approve, as the retirement age for all members of a specified eligible superannuation plan in which a defined benefit interest is held, or an identifiable class of members of the plan, an age other than:
- (a) the retirement age specified in the governing rules of the plan; or
  - (b) the age of 65 years.

Note: Eligible superannuation plans may be specified by class (see subsection 13(3) of the *Legislation Act 2003*).



# EXPOSURE DRAFT

## **54 Gross value—accumulation interest (other than a partially vested accumulation interest): more straight-forward cases**

- (1) This section applies for the superannuation interest if item 3 of the table in section 52 applies for the interest.

*There is evidence from the trustee of the value of gross benefits that would be payable if the member spouse were to cease being a member at the relevant date*

- (2) If:
- (a) evidence before the court includes a statement issued by the trustee of the plan in which the superannuation interest is held; and
  - (b) that statement sets out the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the relevant date if the member spouse had voluntarily ceased to be a member of the plan at that date;

the **gross value of the superannuation interest at the relevant date** is that value set out in the statement.

*There is evidence of a member statement setting out the value of the superannuation interest at the relevant date*

- (3) If:
- (a) evidence before the court includes a member information statement for the member spouse setting out the value of the superannuation interest at the relevant date; and
  - (b) that statement (or that value set out in the statement) has been provided to the member spouse; and
  - (c) subsection (2) does not apply;

the **gross value of the superannuation interest at the relevant date** is that value set out in the statement.

## **55 Gross value—accumulation interest (other than a partially vested accumulation interest): other cases**

- (1) This section applies for the superannuation interest if:
- (a) item 3 of the table in section 52 applies for the interest; and
  - (b) neither subsection 54(2) nor (3) applies for the interest.
- (2) The gross value of the superannuation interest at the relevant date is calculated using the formula in subsection (3). The inputs for that formula will depend on whether the evidence before the court:
- (a) includes the contents of only 1 member information statement (an **early statement**) for the member spouse and relating to the interest, and the relevant date is after the valuation date stated in that statement; or
  - (b) includes the contents of 2 member information statements for the member spouse and relating to the interest, and the relevant date is between the valuation date stated in one of those statements (the **first statement**) and the valuation date stated in the other statement (the **second statement**); or

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- (c) includes the contents of only 1 member information statement (a *late statement*) for the member spouse and relating to the interest, and the relevant date is before the valuation date stated in that statement; or
- (d) does not include the contents of any such member information statement.

(3) The *gross value of the superannuation interest at the relevant date* is equal to:

$$\text{Values for first valuation date} + \frac{\left( \begin{array}{cc} \text{Values for} & \text{Values for} \\ \text{second valuation} & \text{first valuation} \\ \text{date} & \text{date} \end{array} \right) \times \text{Number of days between the first valuation date and the relevant date (excluding both of those dates)}}{\text{Number of days in the period starting on the day after the first valuation date and ending on the second valuation date}}$$

where:

*values for first valuation date* means the sum of:

- (a) the value of the superannuation interest at the first valuation date; and
- (b) the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan) in the period:
  - (i) starting on the day after the first valuation date; and
  - (ii) ending on the day before the relevant date;less the value of any partial payment of benefits to the member spouse made in that period.

Note: Some of the terms in this definition are defined in subsection (4). See also subsection (5).

*values for second valuation date* means the sum of:

- (a) the value of the superannuation interest at the second valuation date; and
- (b) the value of any partial payment of benefits made to the member spouse in the period starting on the day after the relevant date and ending on the second valuation date, less:
  - (i) the value of any benefits rolled over, or transferred, by the member spouse in that period to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan); and
  - (ii) any interest earned on those benefits in that period.

Note: Some of the terms in this definition are defined in subsection (4). See also subsection (5).

- (4) The meanings of some of the terms used in subsection (3) are as follows, depending on what evidence is before the court. If that evidence:
  - (a) is the contents of an early statement (see paragraph (2)(a)), then:
    - (i) the *first valuation date* is the valuation date stated in that statement; and
    - (ii) the *value of the interest at the first valuation date* is the value of the interest stated in that statement (see subsection (5)); and

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- (iii) the **second valuation date** is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
  - (iv) the **value of the interest at the second valuation date** is the value of the interest, including all related valuation amounts (see subsection (5)) for the interest, at that date; or
  - (b) is the content of 2 statements (see paragraph (2)(b)), then:
    - (i) the **first valuation date** is the valuation date stated in the first statement mentioned in that paragraph; and
    - (ii) the **value of the interest at the first valuation date** is the value of the interest stated in the first statement (see subsection (5)); and
    - (iii) the **second valuation date** is the valuation date stated in the second statement mentioned in that paragraph; and
    - (iv) the **value of the interest at the second valuation date** is the value of the interest stated in the second statement (see subsection (5)); or
  - (c) is the contents of a late statement (see paragraph (2)(c)), then:
    - (i) the **first valuation date** is the date when the interest was acquired by the member spouse; and
    - (ii) the **value of the interest at the first valuation date** is the value of the interest at that date; and
    - (iii) the **second valuation date** is the valuation date stated in the statement; and
    - (iv) the **value of the interest at the second valuation date** is the value of the interest stated in the statement (see subsection (5)); or
  - (d) does not include contents of any such statement (see paragraph (2)(d)), then:
    - (i) the **first valuation date** is the date when the interest was acquired by the member spouse; and
    - (ii) the **value of the interest at the first valuation date** is the value of the interest at that date; and
    - (iii) the **second valuation date** is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
    - (iv) the **value of the interest at the second valuation date** is the value of the interest, including all related valuation amounts (see subsection (5)) for the interest, at that date.
- (5) In this section:

**related valuation amount**, for a superannuation interest at a particular date, means:

- (a) any amount payable under an earlier payment split that applies in respect of the interest; or
- (b) the amount of any surcharge debt, at that date, of the member spouse in respect of the interest.

**valuation date**, for a superannuation interest to which a member information statement for the member spouse applies, means the date as at which the value of the interest is stated in the statement.

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**value**, of a superannuation interest stated in a member information statement for the member spouse, means:

- (a) the value stated in the statement (however that value is described); or
- (b) if 2 or more such values are stated in the statement—the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest if the member spouse had voluntarily ceased to be a member of the plan at the date at which the value is stated.

Note: A value could be described, for example, as the member's account balance, the member's share in the plan, or the member's withdrawal benefit.

### **56 Gross value—partially vested accumulation interest**

- (1) This section applies for the superannuation interest if item 4 of the table in section 52 applies for the interest.

*Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors*

- (2) If:
  - (a) under section 62, the Minister has approved one or more methods or factors to be used to determine the gross value of the superannuation interest; and
  - (b) evidence before the court includes the contents of a statement that:
    - (i) was issued by the trustee of the plan in which the interest is held; and
    - (ii) sets out the gross value of the interest as determined using the approved method or factors;

the **gross value of the superannuation interest at the relevant date** is as set out in the statement.

*Minister has not approved any methods or factors, and there is evidence that the trustee has used the method set out in Schedule 4*

- (3) If:
  - (a) paragraph (2)(a) does not apply; and
  - (b) evidence before the court includes the contents of a statement that:
    - (i) was issued by the trustee of the plan in which the superannuation interest is held; and
    - (ii) sets out the gross value of the interest as determined using the method set out in Schedule 4;

the **gross value of the superannuation interest at the relevant date** is as set out in the statement.

*There is no evidence before the court of the contents of a statement referred to in paragraph (2)(b) or (3)(b)*

- (4) If neither paragraph (2)(b) nor (3)(b) applies, the **gross value of the superannuation interest at the relevant date** is to be determined using:
  - (a) if, under section 62, the Minister has approved one or more methods or factors to be used to determine the gross value of the interest—the approved method or factors; or

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(b) otherwise—the method set out in Schedule 4.

## **57 Gross value—superannuation interest consists of several components**

- (1) This section applies for the superannuation interest if item 5 of the table in section 52 applies for the interest.

*Minister has approved one or more methods or factors, and there is evidence that the trustee has used those methods or factors*

- (2) If:
- (a) under section 62, the Minister has approved one or more methods or factors to be used to determine the gross value of the superannuation interest; and
  - (b) evidence before the court includes the contents of a statement that:
    - (i) was issued by the trustee of the plan in which the interest is held; and
    - (ii) sets out the gross value of the interest as determined using the approved method or factors;

the ***gross value of the superannuation interest at the relevant date*** is as set out in the statement.

*Otherwise*

- (3) If paragraph (2)(a) does not apply, the ***gross value of the superannuation interest at the relevant date*** is the sum of the gross value of each component of the superannuation interest:
- (a) at the relevant date; and
  - (b) as determined under the provision of this Division that would apply if the component were the whole of the superannuation interest.

## **58 Gross value—interest that is the greater of a defined benefit interest and an accumulation interest (other than a partially vested accumulation interest)**

- (1) This section applies for the superannuation interest if item 6 of the table in section 52 applies for the interest.
- (2) The ***gross value of the superannuation interest at the relevant date*** is the greater of:
- (a) the gross value of the defined benefit interest at the relevant date, as determined under section 53; and
  - (b) the gross value of the accumulation interest at the relevant date, as determined under section 54 or 55.

## **59 Gross value—interest that is the lesser of a defined benefit interest and an accumulation interest (other than a partially vested accumulation interest)**

- (1) This section applies for the superannuation interest if item 7 of the table in section 52 applies for the interest.

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**Part 6** Determining the value of certain superannuation interests of member spouses

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- (2) The *gross value of the superannuation interest at the relevant date* is the lesser of:
- (a) the gross value of the defined benefit interest at the relevant date, as determined under section 53; and
  - (b) the gross value of the accumulation interest at the relevant date, as determined under section 54 or 55.

### **60 Gross value—interest that is a defined benefit interest, the benefit of which is a defined benefit amount less another amount**

- (1) This section applies for the superannuation interest if item 2 of the table in section 52 applies for the interest.
- (2) The *gross value of the superannuation interest at the relevant date* is the difference between:
- (a) the gross value of the defined benefit interest at the relevant date, as determined under section 53; and
  - (b) the value at the relevant date of the other amount (see item 2 of the table in section 52).
- (3) For the purposes of paragraph (2)(b), if:
- (a) the other amount is in respect of a superannuation interest; and
  - (b) this Division provides a method for determining an amount in relation to that kind of interest;
- the value of the other amount at the relevant date is to be determined in accordance with that method.

### **61 Gross value—innovative superannuation interest**

- (1) This section applies for the superannuation interest if item 8 of the table in section 52 applies for the interest.
- (2) The *gross value of the superannuation interest at the relevant date* is to be determined using the methods or factors approved under section 62 by the Minister for determining the gross value of the interest.

### **62 Approval of methods and factors for determining gross value of particular superannuation interests**

- (1) The Minister may, by legislative instrument, approve methods or factors that are to be used to determine the gross value of any of the following:
- (a) a superannuation interest the whole of which is a defined benefit interest (see section 53);
  - (b) a superannuation interest the whole of which is a partially vested accumulation interest (see section 56);
  - (c) a superannuation interest the whole of which is an innovative superannuation interest (see section 61);
  - (d) a superannuation interest consisting of 2 or more components (see item 5 of the table in section 52);

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- (e) a defined benefit interest the gross value of which is to be determined under section 58, 59 or 60.
- (2) A method or factors approved by the Minister under subsection (1) may relate to any of the following:
  - (a) the gross value of a superannuation interest, or a component of a superannuation interest, in a particular eligible superannuation plan;
  - (b) the gross value of a superannuation interest, or a component of a superannuation interest, in a particular category of superannuation interests in a particular eligible superannuation plan;
  - (c) the gross value, in particular circumstances, of any of the following:
    - (i) a superannuation interest, or a component of a superannuation interest, in a particular eligible superannuation plan;
    - (ii) a superannuation interest, or a component of a superannuation interest, in a particular category of superannuation interests, in a particular eligible superannuation plan;
  - (d) the gross value, in particular circumstances, of a particular element of the scheme design of a superannuation interest in a particular eligible superannuation plan.

## Division 2—Determining the value of superannuation interests in the payment phase at the relevant date

### 63 Simplified outline of this Division

Section 64 uses a formula to calculate the value of a superannuation interest of the member spouse that is in the payment phase. This value is needed for paragraph 45(1)(b).

The formula in section 64 has a term called the gross value of the superannuation interest at the relevant date. The remaining sections in this Division calculate that gross value.

Note: This Division does not apply to certain kinds of superannuation interests, including percentage-only interests and interests covered by subsection 45(2).

### 64 Determining the value of superannuation interests in the payment phase at the relevant date

For the purposes of paragraph 45(1)(b), the amount to be determined by the court in relation to a superannuation interest of the member spouse that:

- (a) is not a percentage-only interest; and
- (b) is in the payment phase at the relevant date;

is calculated as follows:

Gross value of the superannuation interest at the relevant date  $\frac{\text{Each earlier relevant amount payable in respect of the superannuation interest}}{\text{the superannuation interest}}$

where:

# EXPOSURE DRAFT

**Part 6** Determining the value of certain superannuation interests of member spouses

**Division 2** Determining the value of superannuation interests in the payment phase at the relevant date

## Section 65

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*gross value of the superannuation interest at the relevant date* means the gross value of the superannuation interest calculated under the table at the end of this section.

*each earlier relevant amount payable in respect of the superannuation interest* means each amount (if any) payable under a payment split:

- (a) applying in relation to a splittable payment in respect of the superannuation interest; and
- (b) having an operative time before the relevant date.

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### Working out the gross value of the superannuation interest at the relevant date

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| Item | If:  | the interest's gross value is calculated under: |
|------|--|---|
| 1    | the whole, or the remaining part, of the benefits in respect of the superannuation interest is payable only as one or more lump sums   | section 65.                                     |
| 2    | the benefits in respect of the superannuation interest are being paid as a pension at the relevant date  | section 66.                                     |
| 3    | (a) part of the benefits in respect of the superannuation interest is being paid as a pension at the relevant date; and<br>(b) the remaining part of the benefits is payable as a lump sum (either at the relevant date or at any time after that date) that is not a commutation of the pension | section 67.                                     |

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## 65 Gross value—benefits payable only as one or more lump sums

If item 1 of the table in section 64 applies for the superannuation interest, the *gross value of the superannuation interest at the relevant date* is the withdrawal benefit in relation to the member spouse at that date.

## 66 Gross value—benefits paid as pension

- (1) This section applies for the superannuation interest if item 2 of the table in section 64 applies for the interest.

*Pension payable for the life of the member spouse*

- (2) If the pension is payable for the life of the member spouse, the *gross value of the superannuation interest at the relevant date* is to be determined using:
  - (a) if, under section 68, the Minister has approved a method or factors to be used to determine the gross value of the interest—the approved method or factors; or
  - (b) if paragraph (a) does not apply and the pension is payable due to the member spouse's invalidity—the method set out in Schedule 6; or
  - (c) if neither paragraph (a) nor (b) applies—the method set out in Schedule 5.



# EXPOSURE DRAFT

Determining the value of certain superannuation interests of member spouses **Part 6**  
Determining the value of superannuation interests in the payment phase at the relevant date **Division 2**

Section 67

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*Pension payable for fixed term (other than market linked pension)*

- (3) If the pension is payable for a fixed term only and the pension is not a market linked pension, the **gross value of the superannuation interest at the relevant date** is to be determined using the method set out in Schedule 7.

*Allocated pension*

- (4) If the pension is an allocated pension, the **gross value of the superannuation interest at the relevant date** is to be the withdrawal benefit in relation to the member spouse at that date.

*Market linked pension*

- (5) If the pension is a market linked pension, the **gross value of the superannuation interest at the relevant date** is the market linked pension account balance at that date.

*Pension in respect of an innovative superannuation interest*

- (6) Despite subsections (2) to (5), if the pension is in respect of an innovative superannuation interest, the **gross value of the superannuation interest at the relevant date** is to be determined using the method or factors approved under section 68 by the Minister for determining the gross value of the interest.

## **67 Gross value—benefits paid as pension and lump sum also payable**

- (1) This section applies for the superannuation interest if item 3 of the table in section 64 applies for the interest.
- (2) If the lump sum is payable at the relevant date, the **gross value of the superannuation interest at the relevant date** is the sum of:
  - (a) the gross value of the pension at the relevant date, as determined under section 66; and
  - (b) the amount of the lump sum.
- (3) If the lump sum is payable at any time after the relevant date, the **gross value of the superannuation interest at the relevant date** is to be determined using the method set out in Schedule 8.

## **68 Approval of methods and factors for determining gross value of certain superannuation interests being paid as a pension**

The Minister may, by legislative instrument, approve methods or factors that are to be used to determine the gross value of:

- (a) a superannuation interest the benefits in respect of which are being paid as a pension that is payable for the life of the member spouse; or
- (b) an innovative superannuation interest the benefits in respect of which are being paid as a pension.

Note: If the Minister approves a method or factors to be used to determine the gross value of a superannuation interest covered by paragraph (a), the approved method or factors are

# EXPOSURE DRAFT

**Part 6** Determining the value of certain superannuation interests of member spouses

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## Section 68

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to be used to determine the gross value of the interest instead of the method set out in Schedule 5 or 6 (see subsection 66(2)).

# EXPOSURE DRAFT

Entitlement of non-member spouse in respect of certain superannuation interests **Part 7**

Preliminary **Division 1**

Section 69

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## Part 7—Entitlement of non-member spouse in respect of certain superannuation interests

### Division 1—Preliminary

#### Subdivision A—Simplified outline of this Part

##### 69 Simplified outline of this Part

This Part is used to calculate the amount the non-member spouse is entitled to be paid in relation to a splittable payment for a superannuation interest of the member spouse covered by:

- (a) a superannuation agreement or a flag lifting agreement; or
- (b) a splitting order.

Division 2 is used to calculate the amount if the interest is in the growth phase.

Division 3 is used to calculate the amount if the interest is in the payment phase.

#### Subdivision B—Interpretation

##### 70 Definitions

In this Part:

***base amount allocated to the non-member spouse***, for a superannuation interest, means the base amount for the interest.

***commutation factor***, for a superannuation interest, means the commutation factor for converting to a lump sum, under the governing rules of the relevant eligible superannuation plan in respect of the superannuation interest, a pension payable to the member spouse or other person, if the pension were to be converted to a lump sum at:

- (a) if the relevant splittable payment in respect of the superannuation interest is payable to the member spouse—the date of the first splittable payment to the member spouse in respect of the superannuation interest after the operative time; or
- (b) if the relevant splittable payment in respect of the superannuation interest is payable to another person for the benefit of the member spouse—the earliest date when the pension could be commuted to a lump sum; or
- (c) if the relevant splittable payment in respect of the superannuation interest is payable to a reversionary beneficiary after the death of the member spouse—the date of the member spouse's death; or
- (d) if the relevant splittable payment in respect of the superannuation interest is payable to:
  - (i) the legal personal representative of the member spouse after the death of the member spouse; or

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## Part 7 Entitlement of non-member spouse in respect of certain superannuation interests

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- (ii) the legal personal representative of a reversionary beneficiary covered by paragraph 90XE(1)(d) or 90YD(1)(d) of the Act after the death of the reversionary beneficiary;

the earliest date at which the legal personal representative could choose to take the remaining benefits in respect of the interest as a lump sum.

Note: For a superannuation interest covered by Subdivision B or F of Division 3 of Part 9, the commutation factor must be provided by the trustee of the plan in response to an application covered by subsection 90XZB(3) or 90YZR(3) of the Act.

***lump sum*** means any amount (other than an amount of a pension payment) that is paid to a member in respect of a superannuation interest.

Note: Examples are a transfer of money, or a rollover of benefits under the SIS Act.

***pension valuation factor***, for a superannuation interest, means the pension valuation factor that applies to the particular pension payable to the member spouse or other person at the date that applies for the commutation factor for the superannuation interest, being:

- (a) if, under section 68, the Minister has approved a method or factors to be used to determine the gross value of a superannuation interest the benefits in respect of which are being paid as a pension that is payable for the life of the member spouse—the approved factor or the factor that applies under the approved method; or
- (b) otherwise—the pension valuation factor under Schedule 5, 6 or 7.

### Subdivision C—Adjustments to the base amount for superannuation interests in the growth phase

#### 71 Meaning of *adjusted base amount applicable to the non-member spouse*

- (1) Working out the adjusted base amount applicable to the non-member spouse, for a superannuation interest at a date, first involves identifying the number of applicable adjustment periods (the ***relevant periods***) for the interest that have ended before that date.

Note 1: This amount only needs to be calculated for Division 2 (that is, for a superannuation interest in the growth phase).

Note 2: To calculate the applicable adjustment periods, see section 72 or 73.

- (2) If there are no relevant periods, the ***adjusted base amount applicable to the non-member spouse***, for the superannuation interest at that date, is the base amount for the interest.
- (3) Otherwise, the ***adjusted base amount applicable to the non-member spouse***, for the superannuation interest at that date, is:
- (a) if there is 1 relevant period—the amount calculated by adjusting, under section 74 after that period, the base amount for the interest; and
- (b) if there are 2 or more relevant periods—the final amount calculated under this paragraph after:
- (i) adjusting, under section 74 after the second relevant period, the result of paragraph (a) of this subsection; and

# EXPOSURE DRAFT

Entitlement of non-member spouse in respect of certain superannuation interests **Part 7**

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Section 72

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- (ii) adjusting, under section 74 after each later relevant period (if any), the result of the previous application of this paragraph for the previous relevant period.

Note 1: Depending on the rate of interest that applies to the interest for a relevant period, the base amount (or result) may be adjusted by a positive amount or a negative amount or, if the rate was nil, not adjusted.

Note 2: These adjustments will need to be made by the trustee of the eligible superannuation plan in which the interest is held.

## 72 Applicable adjustment periods—whole of superannuation interest is an accumulation interest

- (1) If the whole of a superannuation interest is an accumulation interest in a regulated superannuation fund (other than a self managed superannuation fund), an approved deposit fund or an RSA, the *applicable adjustment periods* for the interest are:
  - (a) if a splittable payment becomes payable, or a terminating action occurs, for the interest before the end of the first allotment period—the period:
    - (i) beginning at the operative time; and
    - (ii) ending at the end of the period for which the plan would allot net earnings to the member spouse if the member spouse voluntarily ceased to be a member of the plan on the day when the splittable payment becomes payable or the terminating action occurs; and
  - (b) otherwise—the periods set out in subsection (2).

Note: If paragraph (a) applies, that period is the first (and only) applicable adjustment period for the interest.
- (2) For the purposes of paragraph (1)(b), the periods are as follows:
  - (a) the period beginning at the operative time and ending at the end of the first allotment period for the interest;
  - (b) after the first allotment period, each whole allotment period (if any) for the interest ending before a splittable payment becomes payable, or a terminating action occurs, for the interest;
  - (c) in the allotment period in which a splittable payment becomes payable, or a terminating action occurs, for the interest—the period:
    - (i) beginning at the beginning of that allotment period; and
    - (ii) ending at the end of the period for which the plan would allot net earnings to the member spouse if the member spouse voluntarily ceased to be a member of the plan on the day when the splittable payment becomes payable or the terminating action occurs.

- (3) In this section:

*allotment period*, for a superannuation interest, means the period used by the plan in which the interest is held to allot net earnings of the plan to the member who has the interest.

*first allotment period*, for a superannuation interest, means the allotment period in which the operative time in relation to the relevant payment split occurs.

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Part 7 Entitlement of non-member spouse in respect of certain superannuation interests

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## Section 73

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**terminating action**, for a superannuation interest, means any of the following actions, in respect of the non-member spouse's entitlement under a superannuation agreement, flag lifting agreement or splitting order, by the trustee of the plan in which the interest is held:

- (a) the creation, under the payment split provisions of the SIS Regulations, of a new interest in the plan for the non-member spouse;
- (b) the opening of a new RSA for the non-member spouse under the payment split provisions of the RSA Regulations;
- (c) the transfer or rollover, under the payment split provisions of the SIS Regulations or the RSA Regulations, to another superannuation fund or an RSA of an amount to be held for the benefit of the non-member spouse;
- (d) if the non-member spouse has satisfied a relevant condition of release—the payment, under the payment split provisions of the SIS Regulations or the RSA Regulations, of an amount to the non-member spouse.

Note: For the meaning of *relevant condition of release*, see section 19.

### 73 Applicable adjustment periods—other superannuation interests

- (1) If a superannuation interest is not an interest to which section 72 applies, the **applicable adjustment periods** for the interest are:
  - (a) if a splittable payment becomes payable, or a terminating action occurs, for the interest before the end of the first year—the period beginning at the operative time and ending at on the day before the payment becomes payable or the terminating action occurs; and
  - (b) otherwise—the following periods:
    - (i) the period beginning at the operative time and ending at the end of the first year;
    - (ii) after the first year, each whole year (if any) for the interest ending before a splittable payment becomes payable, or a terminating action occurs, for the interest;
    - (iii) in the year in which a splittable payment becomes payable, or a terminating action occurs, for the interest—the period beginning at the beginning of that year and ending on the day before the payment becomes payable or the terminating action occurs.
- (2) In this section:

**first year** means the year in which the operative time in relation to the relevant payment split occurs.

**terminating action**, for a superannuation interest, means any of the following actions, in respect of the non-member spouse's entitlement under a superannuation agreement, flag lifting agreement or splitting order, by the trustee of the plan in which the interest is held:

- (a) the creation, under the governing rules of the plan, of a new interest in the plan for the non-member spouse;
- (b) the transfer or rollover, under the governing rules of the plan, to another superannuation fund or an RSA of an amount to be held for the benefit of the non-member spouse;

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- (c) if the non-member spouse has satisfied a relevant condition of release—the payment of an amount to the non-member spouse.

Note: For the meaning of *relevant condition of release*, see section 19.

**year**, for a superannuation interest, means:

- (a) if the interest is in a regulated superannuation fund that has a year of income within the meaning of subsection 10(1) of the SIS Act—a year of income; or  
(b) otherwise—a financial year.

## 74 Interest rates for adjustment of base amount

- (1) An amount for a superannuation interest is adjusted:
- (a) under this section; and
  - (b) for an applicable adjustment period for the superannuation interest;
- by applying an interest rate to that amount after that period. The interest rate will depend on the superannuation interest.

*Superannuation interest is wholly an accumulation interest (other than an interest in a self managed superannuation fund)*

- (2) If the whole of the superannuation interest is an accumulation interest (other than an interest in a self managed superannuation fund), the interest rate for the applicable adjustment period for the interest is:
- (a) if the interest is in a regulated superannuation fund, an approved deposit fund or is an RSA:
    - (i) where there has been an allotment (whether of a positive, negative or nil amount) to the member spouse of net earnings of the eligible superannuation plan for the adjustment period—the rate of that allotment; or
    - (ii) otherwise—the rate at which net earnings of the plan would be allotted to the member spouse if the member spouse voluntarily ceased to be a member of the plan on the day the relevant splittable payment becomes payable or the terminating action (as defined in subsection 72(3)) occurs; and
  - (b) if the interest is in an exempt public sector superannuation scheme or a superannuation fund that is not a regulated superannuation fund:
    - (i) where there has been an allocation (whether of a positive, negative or nil amount) to the member spouse of investment earnings (however described) of the eligible superannuation plan for the adjustment period—the rate of that allocation; or
    - (ii) otherwise—the rate at which those investment earnings would be allocated to the member spouse if the member spouse voluntarily ceased to be a member of the plan on the day before the relevant splittable payment becomes payable.

*Superannuation interest is wholly or partly a defined benefit interest, or is in a self managed superannuation fund*

- (3) If:
-

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## Section 74

- (a) the whole, or any component, of the superannuation interest is a defined benefit interest, or the superannuation interest is in a self managed superannuation fund; and
- (b) the applicable adjustment period for the interest is covered by column 1 of an item of the following table;

the interest rate for the adjustment period for the interest is declared or calculated under column 2 of that item.

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### Interest rate for the adjustment period for the superannuation interest

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| Item | Column 1<br>If the applicable adjustment period:   | Column 2<br>then the interest rate for that period is:   |
|------|--|--|
| 1    | is a financial year  | the rate determined, as described in paragraph (4)(a), under subsection (4) for the financial year.                                    |
| 2    | is a period of less than 12 months that is within a single financial year                                      | the rate calculated using the method determined, as described in paragraph (4)(b), under subsection (4) for the financial year.        |
| 3    | commences in a financial year and ends during the following financial year (the <i>second financial year</i> ) | the rate calculated using the method determined, as described in paragraph (4)(c), under subsection (4) for the second financial year. |

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- (4) The Australian Government Actuary may, by legislative instrument, determine one or more of the following rates or methods for a financial year:
  - (a) a rate that is *[TBC]* percentage points above the percentage change in the original estimate of full-time adult ordinary time earnings for all persons in Australia, as published by the Australian Bureau of Statistics, for the 12 months ending with the November quarter of the previous financial year;
  - (b) a method that provides for the calculation of a rate for the financial year by reference to the rate described in paragraph (a) for the financial year;
  - (c) a method that provides for the calculation of a rate for the financial year by reference to the following rates:
    - (i) the rate described in paragraph (a) for the previous financial year;
    - (ii) the rate described in paragraph (a) for the financial year;

Note: Assume a rate is needed for an adjustment period straddling 2 financial years: 2024-25 and 2025-26. The rate is calculated using a method determined for paragraph (c) of this subsection. The rate referred to in subparagraph (c)(i) is based on the percentage change in the 12 months ending with the November quarter of 2023-24. The rate referred to in subparagraph (c)(ii) is based on the percentage change in the 12 months ending with the November quarter of 2024-25.



# EXPOSURE DRAFT

Entitlement of non-member spouse in respect of certain superannuation interests **Part 7**  
Superannuation interest in growth phase at date of service of agreement or date of order **Division 2**

Section 75

## **Division 2—Superannuation interest in growth phase at date of service of agreement or date of order**

### **Subdivision A—Preliminary**

#### **75 Simplified outline of this Division**

This Division works out the amount the non-member spouse is entitled to be paid under a payment split for a splittable payment for a superannuation interest of the member spouse if the superannuation interest:

- (a) is covered by a superannuation agreement, flag lifting agreement or splitting order; and
- (b) is in the growth phase either at the date the agreement is served on the trustee under section 90XI or 90YM of the Act, or at the date of the splitting order (as applicable).

Different approaches apply for working out this amount depending on whether the benefits for the superannuation interest are payable only as a lump sum, involve an optional lump sum or do not involve a lump sum.

#### **76 Application of this Division**

- (1) This Division applies to a superannuation interest for the purposes of subsection 38(2) or paragraph 47(a).

Note: This Division does not apply to a payment split in respect of a small superannuation accounts interest (see paragraph 38(1)(a) or section 47).

- (2) If a payment split is a second or later payment split applicable to a splittable payment for the superannuation interest, this Division applies as if it were modified as described in Schedule 9.

Note: Sections 90XX and 90YZN of the Act provide for the order in which multiple payment splits that apply to the same splittable payment are to be calculated.

### **Subdivision B—Benefits payable only as lump sum**

#### **77 Amount to be paid to non-member spouse—benefits payable only as lump sum that is greater than or equal to the adjusted base amount**

- (1) This section applies for the superannuation interest if:
  - (a) the first splittable payment that the member spouse or other person is entitled to receive is a lump sum; and
  - (b) the lump sum is not one that the member spouse or other person may be entitled to receive because the member spouse or other person may choose, by way of a commutation of a pension or otherwise, to take the whole, or a part, of the benefits in respect of the interest as a lump sum; and
  - (c) the lump sum is greater than or equal to the adjusted base amount applicable to the non-member spouse for the interest at the date the splittable payment becomes payable.

# EXPOSURE DRAFT

**Part 7** Entitlement of non-member spouse in respect of certain superannuation interests

**Division 2** Superannuation interest in growth phase at date of service of agreement or date of order

## Section 78

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- (2) The amount that the non-member spouse is entitled to be paid from the lump sum is equal to the adjusted base amount applicable to the non-member spouse at that date.
- (3) The non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.

### **78 Amount to be paid to non-member spouse—benefits payable only as lump sum that is less than adjusted base amount**

- (1) This section applies for the superannuation interest if:
  - (a) the first splittable payment that the member spouse or other person is entitled to receive is a lump sum; and
  - (b) the lump sum is not one that the member spouse or other person may be entitled to receive because the member spouse or other person may choose, by way of a commutation of a pension or otherwise, to take the whole or a part of the benefits in respect of the interest as a lump sum; and
  - (c) the lump sum is less than the adjusted base amount applicable to the non-member spouse for the interest at the date the splittable payment becomes payable.
- (2) The amount that the non-member spouse is entitled to be paid in respect of the superannuation interest is:
  - (a) the amount of the lump sum; and
  - (b) unless section 79 applies in relation to the interest—the amount, calculated under subsection (3) of this section, from each other splittable payment that becomes payable in respect of the interest.
- (3) For the purposes of paragraph (2)(b), the amount to be paid to the non-member spouse from each other splittable payment that becomes payable in respect of the superannuation interest is equal to:

$$\frac{\left( \text{Adjusted base amount} - \text{Initial lump sum} \right) \times \text{Splittable payment amount}}{\text{Deemed value of the interest were it in payment phase at adjusted date} - \text{Initial lump sum}}$$

where:

***adjusted base amount*** means the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment became payable in respect of the superannuation interest.

***initial lump sum*** means the amount of the lump sum paid to the non-member spouse under paragraph (2)(a).

***splittable payment amount*** means the amount of the relevant splittable payment.

***deemed value of the interest were it in payment phase at adjusted date*** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest.

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# EXPOSURE DRAFT

Entitlement of non-member spouse in respect of certain superannuation interests **Part 7**  
Superannuation interest in growth phase at date of service of agreement or date of order **Division 2**

Section 79

## 79 Amount to be paid to non-member spouse—optional lump sum from remaining benefits

- (1) This section applies for the superannuation interest if:
- (a) the non-member spouse is entitled to be paid the amount of a lump sum under paragraph 78(2)(a) in respect of the interest; and
  - (b) the member spouse or other person may, under the governing rules of the relevant eligible superannuation plan, choose (by way of a commutation of a pension or otherwise) to take the whole or a part of the remaining benefits in respect of the interest as a lump sum; and
  - (c) the non-member spouse has served a request:
    - (i) in accordance with Form 2 in Schedule 1; and
    - (ii) on the trustee of the plan;for the non-member spouse to be paid, as a lump sum, the whole or a proportion of the remaining adjusted base amount applicable to the non-member spouse for the interest at the date the splittable payment became payable; and
  - (d) any choice by the member spouse or other person to be paid the amount requested by the non-member spouse will not cause the member spouse or other person to lose the right to take the remaining part of the benefits in respect of the interest as a pension.

*Non-member spouse requests whole of remaining adjusted base amount to be paid as a lump sum*

- (2) If the request under paragraph (1)(c) is for the non-member spouse to be paid, as a lump sum, the whole of the remaining adjusted base amount applicable to the non-member spouse for the interest at the date the splittable payment became payable:
- (a) the member spouse or other person must choose to be paid, as a lump sum, an amount that is at least the amount calculated under subsection (3); and
  - (b) the non-member spouse is entitled to be paid that amount; and
  - (c) the non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.
- (3) For the purposes of paragraph (2)(a), the amount is:

$$\frac{\left( \text{Adjusted base amount} - \text{Initial lump sum} \right) \times \text{Commutation factor for the interest}}{\text{Pension valuation factor for the interest}}$$

where:

**adjusted base amount** means the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment became payable in respect of the superannuation interest.

**initial lump sum** means the amount of the lump sum paid to the non-member spouse under paragraph 78(2)(a).

Note: For the meanings of **commutation factor** and **pension valuation factor**, see section 70.

# EXPOSURE DRAFT

**Part 7** Entitlement of non-member spouse in respect of certain superannuation interests

**Division 2** Superannuation interest in growth phase at date of service of agreement or date of order

## Section 79

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*Non-member spouse requests proportion of remaining adjusted base amount to be paid as a lump sum*

- (4) If the request under paragraph (1)(c) is for the non-member spouse to be paid, as a lump sum, a proportion of the remaining adjusted base amount applicable to the non-member spouse at the date the splittable payment became payable:
- (a) the member spouse or other person must choose to be paid, as a lump sum, an amount (the **member's lump sum**) that is at least the amount calculated under subsection (5) (the **minimum lump sum**); and
  - (b) the non-member spouse is entitled to be paid an amount equal to the minimum lump sum; and
  - (c) the non-member spouse is also entitled to be paid an amount, calculated under subsection (6), from:
    - (i) if the member's lump sum exceeds the minimum lump sum—the amount of the excess; and
    - (ii) each other splittable payment that becomes payable in respect of the superannuation interest.
- (5) For the purposes of paragraph (4)(a), the minimum lump sum is:

$$\frac{\left( \left( \begin{array}{c} \text{Adjusted} \\ \text{base amount} \end{array} - \text{Initial lump sum} \right) \times \text{Proportion} \right) \times \begin{array}{c} \text{Commutation factor} \\ \text{for the interest} \end{array}}{\text{Pension valuation factor for the interest}}$$

where:

**adjusted base amount** means the amount of the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment became payable in respect of the superannuation interest.

**initial lump sum** means the amount of the lump sum paid to the non-member spouse under paragraph 78(2)(a).

**proportion** means the proportion of the adjusted base amount that the non-member spouse has requested under paragraph (1)(c) to be paid, as a lump sum, to the non-member spouse.

Note: For the meanings of **commutation factor** and **pension valuation factor**, see section 70.

- (6) For the purposes of paragraph (4)(c), the amount is equal to:

$$\frac{\left( \left( \begin{array}{c} \text{Adjusted base} \\ \text{amount} \end{array} - \text{Initial lump sum} \right) \times \left( 1 - \text{Proportion} \right) \right) \times \begin{array}{c} \text{Splittable payment} \\ \text{amount} \end{array}}{\text{Remaining value of the superannuation interest}}$$

where:

**adjusted base amount** means the amount of the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment became payable in respect of the superannuation interest.

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**initial lump sum** means the amount of the lump sum paid to the non-member spouse under paragraph 78(2)(a).

**proportion** means the proportion of the adjusted base amount that the non-member spouse has requested under paragraph (1)(c) to be paid, as a lump sum, to the non-member spouse.

**splittable payment amount** means:

- (a) if under subparagraph (4)(c)(i) the member's lump sum exceeds the minimum lump sum—the amount of the excess; or
- (b) the amount of the other splittable payment (see subparagraph (4)(c)(ii)).

**remaining value of the superannuation interest** means the remaining value of the superannuation interest after the payment of the lump sums to the non-member spouse under paragraph 78(2)(a) and paragraph (4)(c) of this section, calculated under subsection (7) of this section.

- (7) For the purposes of subsection (6), the remaining value of the superannuation interest after the payment of the lump sums to the non-member spouse under paragraph 78(2)(a) and paragraph (4)(c) of this section is the amount equal to:

$$\text{Deemed value of the interest were it in payment phase at adjusted date} - \text{Initial lump sum} - \left( \frac{\text{Other lump sum} \times \text{Pension valuation factor for the interest}}{\text{Commutation factor for the interest}} \right)$$

where:

**deemed value of the interest were it in payment phase at adjusted date** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest.

**initial lump sum** means the amount of the lump sum paid to the non-member spouse under paragraph 78(2)(a).

**other lump sum** means the amount of the lump sum paid to the non-member spouse under paragraph (4)(b).

Note: For the meanings of *commutation factor* and *pension valuation factor*, see section 70.

## Subdivision C—Optional lump sum relating to the whole or part of the adjusted base amount

### 80 Amount to be paid to non-member spouse—optional lump sum relating to the whole of the adjusted base amount

- (1) This section applies for the superannuation interest if:
- (a) benefits in respect of the interest are not payable as an allocated pension or a market linked pension; and

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- (b) the member spouse or other person may, under the governing rules of the relevant eligible superannuation plan, choose (by way of a commutation of a pension or otherwise) to take a lump sum:
    - (i) of an amount that is at least the adjusted base amount applicable to the non-member spouse for the interest at the date the splittable payment becomes payable; and
    - (ii) without losing the right to take the remaining part of the benefits in respect of the interest as a pension; and
  - (c) the non-member spouse has served a request, in accordance with Form 3 in Schedule 1, on the trustee of the plan requesting that the non-member spouse be paid, as a lump sum, the whole of that adjusted base amount.
- (2) The member spouse must choose to be paid, as a lump sum, an amount equal to:

$$\frac{\text{Adjusted base amount} \times \text{Commutation factor for the interest}}{\text{Pension valuation factor for the interest}}$$

where:

***adjusted base amount*** means the amount of the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment became payable in respect of the superannuation interest.

Note: For the meanings of ***commutation factor*** and ***pension valuation factor***, see section 70.

- (3) The amount that the non-member spouse is entitled to be paid in respect of the superannuation interest is the same as the amount calculated under subsection (2).
- (4) The non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.

### **81 Amount to be paid to non-member spouse—optional lump sum relating to part of the adjusted base amount**

- (1) This section applies for the superannuation interest if:
  - (a) benefits in respect of the interest are not payable as an allocated pension or a market linked pension; and
  - (b) the member spouse or other person may, under the governing rules of the relevant eligible superannuation plan, choose (by way of a commutation of a pension or otherwise) to take a lump sum:
    - (i) of an amount that is at least the adjusted base amount applicable to the non-member spouse for the interest at the date the splittable payment becomes payable; and
    - (ii) without losing the right to take the remaining part of the benefits in respect of the interest as a pension; and
  - (c) the non-member spouse has served a request, in accordance with Form 3 in Schedule 1, on the trustee of the plan requesting that the non-member spouse be paid, as a lump sum, a proportion of that adjusted base amount.

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- (2) The member spouse must choose to be paid, as a lump sum, an amount (the **member's lump sum**) that is at least the following amount (the **minimum lump sum**):

$$\frac{\left( \text{Adjusted base amount} \times \text{Proportion} \right) \times \text{Commutation factor for the interest}}{\text{Pension valuation factor for the interest}}$$

where:

**adjusted base amount** means the amount of the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment became payable in respect of the superannuation interest.

**proportion** means the proportion of the adjusted base amount that the non-member spouse has requested under paragraph (1)(c) to be paid, as a lump sum, to the non-member spouse.

Note: For the meanings of **commutation factor** and **pension valuation factor**, see section 70.

- (3) The amount that the non-member spouse is entitled to be paid in respect of the superannuation interest is:
- (a) an amount equal to the minimum lump sum; and
  - (b) an amount, calculated under subsection (4), from:
    - (i) if the member's lump sum exceeds the minimum lump sum—the amount of the excess; and
    - (ii) each other splittable payment that becomes payable in respect of the superannuation interest.
- (4) For the purposes of paragraph (3)(b), the amount is equal to:

$$\frac{\left( \text{Adjusted base amount} \times \left( 1 - \text{Proportion} \right) \right) \times \text{Splittable payment amount}}{\text{Deemed value of the interest were it in payment phase at adjusted date} - \left( \frac{\text{Initial lump sum} \times \text{Pension valuation factor for the interest}}{\text{Commutation factor for the interest}} \right)}$$

where:

**adjusted base amount** means the amount of the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment became payable in respect of the superannuation interest.

**proportion** means the proportion of the adjusted base amount that the non-member spouse has requested under paragraph (1)(c) to be paid, as a lump sum, to the non-member spouse.

**splittable payment amount** means:

- (a) if under subparagraph (3)(b)(i) the member's lump sum exceeds the minimum lump sum—the amount of the excess; or
- (b) the amount of the other splittable payment (see subparagraph (3)(b)(ii)).

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*deemed value of the interest were it in payment phase at adjusted date* means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest.

*initial lump sum* means the amount of the lump sum paid to the non-member spouse under paragraph (3)(a).

Note: For the meanings of *commutation factor* and *pension valuation factor*, see section 70.

### **Subdivision D—No benefit payable only as a lump sum, or first splittable payment is not a lump sum**

#### **82 Amount to be paid to non-member spouse—no benefit payable only as a lump sum, or first splittable payment is not a lump sum**

- (1) This section applies for the superannuation interest if:
  - (a) both:
    - (i) benefits in respect of the interest are not payable as an allocated pension or a market linked pension; and
    - (ii) no benefit is payable to the member spouse or other person as a lump sum (including a lump sum that the member spouse or other person may choose to take, by way of a commutation of a pension, in respect of the whole, or a part, of the benefits in respect of the interest); or
  - (b) the first splittable payment that the member spouse or other person is entitled to receive is not a lump sum, but a lump sum is payable in respect of the interest at a later time.
- (2) The amount that the non-member spouse is entitled to be paid in respect of each splittable payment that becomes payable in respect of the superannuation interest is equal to:

$$\frac{\text{Adjusted base amount} \times \text{Splittable payment amount}}{\text{Deemed value of the interest were it in payment phase at adjusted date}}$$

where:

*adjusted base amount* means the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment becomes payable in respect of the superannuation interest.

*splittable payment amount* means the amount of the relevant splittable payment.

*deemed value of the interest were it in payment phase at adjusted date* means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest.



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## **83 Amount to be paid to non-member spouse—benefits payable as allocated pension or market linked pension**

- (1) This section applies for the superannuation interest if:
- (a) the whole, or a part, of the benefits in respect of the interest are payable as an allocated pension or a market linked pension; and
  - (b) section 77 does not apply for the interest.

*Benefits for the interest are payable as an allocated pension and not as a market linked pension*

- (2) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest at a particular date; and
  - (b) the whole, or a part, of the benefits for the interest are payable as an allocated pension and not as a market linked pension;
- the non-member spouse is entitled to be paid, from the lump sum from which the allocated pension is payable, an amount equal to the adjusted base amount applicable to the non-member spouse for the interest at that date.

*Benefits for the interest are payable as a market linked pension and not as an allocated pension*

- (3) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest at a particular date; and
  - (b) the whole, or a part, of the benefits for the interest are payable as a market linked pension and not as an allocated pension;
- the non-member spouse is entitled to be paid, from the lump sum from which the market linked pension is payable, an amount equal to the adjusted base amount applicable to the non-member spouse for the interest at that date.

*Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is greater than or equal to the adjusted base amount*

- (4) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest at a particular date; and
  - (b) one part of the benefits for the interest is payable as an allocated pension and another part is payable as a market linked pension; and
  - (c) the amount of the lump sum from which the allocated pension is payable is greater than or equal to the adjusted base amount applicable to the non-member spouse for the interest at that date;
- the non-member spouse is entitled to be paid, from that lump sum, an amount equal to that adjusted base amount.

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*Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is less than the adjusted base amount*

- (5) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest at a particular date; and
  - (b) one part of the benefits for the interest is payable as an allocated pension and another part is payable as a market linked pension; and
  - (c) the amount of the lump sum from which the allocated pension is payable falls short of the amount of the adjusted base amount applicable to the non-member spouse for the interest at that date;
- the non-member spouse is entitled to be paid:
- (d) the amount of that lump sum; and
  - (e) so much of the amount of the lump sum from which the market linked pension is payable as is needed to pay that shortfall.

*Entitlement of non-member spouse for any other splittable payments*

- (6) The non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.
- (7) However, if the lump sum mentioned in subsection (2) or (3), or the total of the lump sums mentioned in paragraphs (5)(d) and (e), is less than the adjusted base amount applicable to the non-member spouse for the interest at the date the splittable payment becomes payable, the non-member spouse is entitled to be paid:
- (a) the amount of the lump sum, or lump sums, as applicable; and
  - (b) from each other splittable payment that becomes payable in respect of the superannuation interest, the amount calculated under subsection (8).
- (8) For the purposes of paragraph (7)(b), the amount is equal to:

$$\frac{\left( \text{Adjusted base amount} - \text{Initial lump sum(s)} \right) \times \text{Splittable payment amount}}{\text{Deemed value of the interest were it in payment phase at adjusted date} - \text{Initial lump sum(s)}}$$

where:

***adjusted base amount*** means the adjusted base amount applicable to the non-member spouse for the interest at the date the first splittable payment becomes payable in respect of the superannuation interest.

***initial lump sum(s)*** means the amount of the lump sum, or lump sums, paid to the non-member spouse under paragraph (7)(a).

***splittable payment amount*** means the amount of the relevant splittable payment.

***deemed value of the interest were it in payment phase at adjusted date*** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references

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to the date the first splittable payment became payable in respect of the superannuation interest.

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## **Division 3—Superannuation interest in payment phase at date of service of agreement or date of order**

### **Subdivision A—Preliminary**

#### **84 Simplified outline of this Division**

This Division works out the amount the non-member spouse is entitled to be paid under a payment split for a splittable payment for a superannuation interest of the member spouse if the superannuation interest:

- (a) is not a percentage-only interest; and
- (b) is covered by a superannuation agreement, flag lifting agreement or splitting order; and
- (c) is in the payment phase either at the date the agreement is served on the trustee under section 90XI or 90YM of the Act, or at the date of the splitting order (as applicable).

Different approaches apply for working out this amount depending on whether the payment split is the first or only payment split applicable to the splittable payment, or is the second or a later payment split.

#### **85 Application of this Division**

This Division applies to each of the following:

- (a) a superannuation interest for the purposes of subsection 39(2) if the agreement referred to in paragraph 39(1)(b) states, or has the effect, that the base amount is a total amount that relates to the whole of the superannuation interest;
- (b) a superannuation interest for the purposes of paragraph 47(b).

**Note:** This Division does not apply to percentage-only interests (see subsection 37(1) or section 47), and does not apply to a payment split in respect of a small superannuation accounts interest (see paragraph 39(1)(a) or section 47).

### **Subdivision B—First or only payment split**

#### **86 Application of this Subdivision**

This Subdivision sets out how to calculate the non-member spouse's entitlement under a payment split if the payment split is the first or only payment split for a splittable payment for the superannuation interest.

#### **87 Amount to be paid to non-member spouse—first splittable payment after operative time greater than or equal to the base amount**

- (1) This section applies for the superannuation interest if:
  - (a) the first splittable payment that becomes payable in respect of the interest after the operative time for the payment split is not a payment in respect of an allocated pension or a market linked pension; and

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- (b) the amount of that payment is greater than or equal to the amount of the base amount allocated to the non-member spouse for the interest.
- (2) The amount that the non-member spouse is entitled to be paid from the first splittable payment is equal to the base amount allocated to the non-member spouse for the superannuation interest.
- (3) The non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.

### **88 Amount to be paid to non-member spouse—first splittable payment after operative time is less than the base amount**

- (1) This section applies for the superannuation interest if:
  - (a) the first splittable payment that becomes payable in respect of the interest after the operative time for the payment split is not a payment in respect of an allocated pension or a market linked pension; and
  - (b) the amount of that payment is less than the base amount allocated to the non-member spouse for the interest.
- (2) The amount that the non-member spouse is entitled to be paid in respect of the superannuation interest is:
  - (a) the amount of the first splittable payment; and
  - (b) unless section 89 applies in relation to the interest—the amount, calculated under subsection (3) of this section, from each other splittable payment that becomes payable in respect of the interest.
- (3) For the purposes of paragraph (2)(b), the amount to be paid to the non-member spouse from each other splittable payment that becomes payable in respect of the superannuation interest is equal to:

$$\frac{\left( \text{Base amount} - \text{First splittable payment amount} \right) \times \text{Splittable payment amount}}{\text{Deemed value of the interest} - \text{First splittable payment amount}}$$

where:

**base amount** means the base amount allocated to the non-member spouse for the superannuation interest.

**first splittable payment amount** means the amount of the first splittable payment paid to the non-member spouse under paragraph (2)(a).

**splittable payment amount** means the amount of the relevant splittable payment.

**deemed value of the interest** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest after the operative time for the payment split.

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### **89 Amount to be paid to non-member spouse—optional lump sum from remaining benefits**

- (1) This section applies for the superannuation interest if:
- (a) the non-member spouse is entitled under paragraph 88(2)(a) to be paid the amount of the first splittable payment in respect of the interest after the operative time for the payment split; and
  - (b) the member spouse may, under the governing rules of the relevant eligible superannuation plan, choose (by way of a commutation of a pension payable to the member spouse, or otherwise) to take the whole, or a part, of the remaining benefits in respect of the interest as a lump sum; and
  - (c) the non-member spouse has served a request, in accordance with Form 4 in Schedule 1, on the trustee of the plan requesting that the non-member spouse be paid, as a lump sum, the whole, or a proportion, of the remaining base amount allocated to the non-member spouse for the interest; and
  - (d) any choice by the member spouse to be paid the amount requested by the non-member spouse will not cause the member spouse to lose the right to take the remaining part of the benefits in respect of the interest as a pension.

*Request for whole of remaining base amount to be paid as a lump sum*

- (2) If the request under paragraph (1)(c) is for the non-member spouse to be paid, as a lump sum, the whole of the remaining base amount allocated to the non-member spouse for the interest:
- (a) the member spouse must choose to be paid, as a lump sum, an amount that is at least the amount calculated under subsection (3); and
  - (b) the non-member spouse is entitled to be paid that amount; and
  - (c) the non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.
- (3) For the purposes of paragraph (2)(a), the amount is:

$$\frac{\left( \text{Base amount} - \text{First splittable payment amount} \right) \times \text{Commutation factor for the interest}}{\text{Pension valuation factor for the interest}}$$

where:

**base amount** means the base amount allocated to the non-member spouse for the superannuation interest.

**first splittable payment amount** means the amount of the first splittable payment paid to the non-member spouse under paragraph 88(2)(a).

Note: For the meanings of **commutation factor** and **pension valuation factor**, see section 70.

*Request for proportion of remaining base amount to be paid as a lump sum*

- (4) If the request under paragraph (1)(c) is for the non-member spouse to be paid, as a lump sum, a proportion of the remaining base amount allocated to the non-member spouse for the interest:

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- (a) the member spouse must choose to be paid, as a lump sum, an amount (the *member's lump sum*) that is at least the amount calculated under subsection (5) (the *minimum lump sum*); and
  - (b) the non-member spouse is entitled to be paid an amount equal to the minimum lump sum; and
  - (c) the non-member spouse is also entitled to be paid an amount, calculated under subsection (6), from:
    - (i) if the member's lump sum exceeds the minimum lump sum—the amount of the excess; and
    - (ii) each other splittable payment that becomes payable in respect of the superannuation interest.
- (5) For the purposes of paragraph (4)(a), the minimum lump sum is:

$$\frac{\left( \left( \text{Base amount} - \frac{\text{First splittable payment amount}}{\text{Proportion}} \right) \times \text{Commutation factor for the interest} \right)}{\text{Pension valuation factor for the interest}}$$

where:

*base amount* means the base amount allocated to the non-member spouse for the superannuation interest.

*first splittable payment amount* means the amount of the first splittable payment paid to the non-member spouse under paragraph 88(2)(a).

*proportion* means the proportion of the remaining base amount allocated to the non-member spouse for the interest that the non-member spouse has requested under paragraph (1)(c) to be paid, as a lump sum, to the non-member spouse.

Note: For the meanings of *commutation factor* and *pension valuation factor*, see section 70.

- (6) For the purposes of paragraph (4)(c), the amount is equal to:

$$\frac{\left( \left( \text{Base amount} - \frac{\text{First splittable payment amount}}{\text{Proportion}} \right) \times \left( 1 - \text{Proportion} \right) \right) \times \text{Splittable payment amount}}{\text{Remaining value of the superannuation interest}}$$

where:

*base amount* means the base amount allocated to the non-member spouse in relation to the superannuation interest.

*first splittable payment amount* means the amount of the first splittable payment paid to the non-member spouse under paragraph 88(2)(a).

*proportion* means the proportion of the remaining base amount allocated to the non-member spouse for the interest that the non-member spouse has requested under paragraph (1)(c) to be paid, as a lump sum, to the non-member spouse.

*splittable payment amount* means:

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- (a) if under subparagraph (4)(c)(i) the member's lump sum exceeds the minimum lump sum—the amount of the excess; or
- (b) otherwise—the amount of the other splittable payment (see subparagraph (4)(c)(ii)).

**remaining value of the superannuation interest** means the remaining value of the superannuation interest after the payment of the lump sums to the non-member spouse under paragraph 88(2)(a) and paragraph (4)(c) of this section, calculated under subsection (7) of this section.

- (7) For the purposes of subsection (6), the remaining value of the superannuation interest after the payment of the lump sums to the non-member spouse under paragraph 88(2)(a) and paragraph (4)(c) of this section is:

$$\text{Deemed value of the interest} = \text{First splittable payment amount} - \left( \frac{\text{Initial lump sum} \times \text{Pension valuation factor for the interest}}{\text{Commutation factor for the interest}} \right)$$

where:

**deemed value of the interest** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest after the operative time for the payment split.

**first splittable payment amount** means the amount of the lump sum paid to the non-member spouse under paragraph 88(2)(a).

**initial lump sum** means the amount of the lump sum paid to the non-member spouse under paragraph (4)(b).

Note: For the meanings of *commutation factor* and *pension valuation factor*, see section 70.

## **90 Amount to be paid to non-member spouse—benefits payable as allocated pension or market linked pension**

- (1) This section applies for the superannuation interest if the first splittable payment that becomes payable in respect of the interest after the operative time for the payment split is a payment in respect of an allocated pension or a market linked pension.

*Benefits for the interest are payable as an allocated pension and not as a market linked pension*

- (2) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest; and
  - (b) the whole, or a part, of the benefits for the interest are payable as an allocated pension and not as a market linked pension;



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the non-member spouse is entitled to be paid, from the lump sum from which the allocated pension is payable, an amount equal to the base amount allocated to the non-member spouse for the interest.

*Benefits for the interest are payable as a market linked pension and not as an allocated pension*

- (3) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest; and
  - (b) the whole, or a part, of the benefits for the interest are payable as a market linked pension and not as an allocated pension;

the non-member spouse is entitled to be paid, from the lump sum from which the market linked pension is payable, an amount equal to the base amount allocated to the non-member spouse for the interest.

*Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is greater than or equal to the base amount*

- (4) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest; and
  - (b) one part of the benefits for the interest is payable as an allocated pension and another part is payable as a market linked pension; and
  - (c) the amount of the lump sum from which the allocated pension is payable is greater than or equal to the base amount allocated to the non-member spouse for the interest;

the non-member spouse is entitled to be paid, from that lump sum, an amount equal to that base amount.

*Benefits for the interest are payable as both an allocated pension and a market linked pension—lump sum for allocated pension is less than the base amount*

- (5) If:
- (a) a splittable payment becomes payable in respect of the superannuation interest; and
  - (b) one part of the benefits for the interest is payable as an allocated pension and another part is payable as a market linked pension; and
  - (c) the amount of the lump sum from which the allocated pension is payable falls short of the amount of the base amount allocated to the non-member spouse for the interest;

the non-member spouse is entitled to be paid:

- (d) the amount of that lump sum; and
- (e) so much of the amount of the lump sum from which the market linked pension is payable as is needed to pay that shortfall.

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*Other splittable payments in respect of the superannuation interest*

- (6) The non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.
- (7) However, if the lump sum mentioned in subsection (2) or (3), or the total of the lump sums mentioned in paragraphs (5)(d) and (e), is less than the base amount applicable to the non-member spouse for the interest, the non-member spouse is entitled to be paid:
  - (a) the amount of the lump sum, or lump sums, as applicable; and
  - (b) from each other splittable payment that becomes payable in respect of the superannuation interest, the amount calculated under subsection (8).
- (8) For the purposes of paragraph (7)(b), the amount is equal to:

$$\frac{\left( \text{Base amount} - \text{Initial lump sum(s)} \right) \times \text{Splittable payment amount}}{\text{Deemed value of the interest at date first splittable payment became payable} - \text{Initial lump sum(s)}}$$

where:

**base amount** means the base amount allocated to the non-member spouse for the superannuation interest.

**initial lump sum(s)** means the amount of the lump sum, or lump sums, paid to the non-member spouse under paragraph (7)(a).

**splittable payment amount** means the amount of the relevant splittable payment.

**deemed value of the interest at date first splittable payment became payable** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest after the operative time for the payment split.

## Subdivision C—Second or later payment split

### 91 Application of this Subdivision

This Subdivision sets out how to calculate the non-member spouse's entitlement under a payment split if the payment split is a second or later payment split for a splittable payment for the superannuation interest.

### 92 Amount to be paid to non-member spouse—first splittable payment after operative time greater than or equal to the amount of earlier payments plus base amount

- (1) This section applies for the superannuation interest if:
  - (a) the first splittable payment that becomes payable in respect of the interest after the operative time for the payment split is not a payment in respect of an allocated pension or a market linked pension; and
  - (b) the amount of that payment is greater than or equal to the sum of:

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- (i) the amount payable under subsection 78(3), 79(6), 81(4), 82(2), 88(3) or 89(6) or this section to each other person under a payment split with an earlier operative time for the interest; and
  - (ii) the base amount allocated to the non-member spouse for the interest.
- (2) The amount that the non-member spouse is entitled to be paid in respect of the first splittable payment is that base amount.
- (3) The non-member spouse is not entitled to be paid any amount from any other splittable payment in respect of the superannuation interest.

## **93 Amount to be paid to non-member spouse—first splittable payment after operative time less than amount of earlier payments plus base amount**

- (1) This section applies for the superannuation interest if:
  - (a) the first splittable payment that becomes payable in respect of the interest after the operative time for the payment split is not a payment in respect of an allocated pension or a market linked pension; and
  - (b) the amount of that payment is less than the sum of:
    - (i) the amount payable under subsection 78(3), 79(6), 81(4), 82(2), 88(3) or 89(6) or this section to each other person under a payment split with an earlier operative time for the interest; and
    - (ii) the base amount allocated to the non-member spouse for the interest.
- (2) The amount that the non-member spouse is entitled to be paid in respect of the superannuation interest is equal to the sum of:
  - (a) the amount of the first splittable payment; and
  - (b) from each other splittable payment that becomes payable in respect of the interest, the amount calculated under subsection (3).

Note: Because of the operation of subsections 90XX(3) and 90YZN(3) of the Act, the amount under paragraph (a) of this subsection will be the amount of the first splittable payment as reduced by the amount to which another person is entitled under each payment split with an earlier operative time.

- (3) For the purposes of paragraph (2)(b), the amount is:

$$\frac{\left( \text{Base amount} - \text{First splittable payment amount} \right) \times \text{Splittable payment amount}}{\text{Deemed value of the interest} - \text{First splittable payment amount}}$$

where:

**base amount** means the base amount allocated to the non-member spouse for the superannuation interest.

**first splittable payment amount** means the amount of the first splittable payment (see paragraph (2)(a)).

**splittable payment amount** means the amount of the relevant splittable payment.

**deemed value of the interest** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became

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payable in respect of the superannuation interest after the operative time for the payment split.

### **94 Amount to be paid to non-member spouse—benefits payable as allocated pension or market linked pension**

- (1) This section applies for the superannuation interest if the first splittable payment that becomes payable in respect of the interest after the operative time for the payment split is:
  - (a) a payment in respect of an allocated pension; or
  - (b) a payment in respect of a market linked pension.
- (2) The non-member spouse is entitled to be paid the amounts calculated under section 90 as if the payment split were the first payment split for the splittable payment for the interest.

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## Part 8—Fees payable to trustee and waiver of rights

### 95 Reasonable fees payable to trustee

- (1) For the purposes of subsection 90XY(1) or 90YZO(1) of the Act, the trustee of an eligible superannuation plan may charge reasonable fees for providing services in respect of any of the following matters:
  - (a) a payment split;
  - (b) a payment flag;
  - (c) flag lifting under a flag lifting agreement that does not provide for a payment split;
  - (d) an order under section 90XM or 90YR of the Act terminating the operation of a payment flag;
  - (e) an application under section 90XZB or 90YZR of the Act for information about a superannuation interest;
  - (f) any other thing done by the trustee in relation to a superannuation interest covered by a superannuation agreement, flag lifting agreement or splitting order.
- (2) A fee payable in respect of a matter mentioned in paragraph (1)(a), (b), (c), (d) or (f) is payable:
  - (a) unless paragraph (b) of this subsection applies—by the member spouse and the non-member spouse in equal parts; or
  - (b) if the fee is in respect of a payment split under which the non-member spouse is entitled to be paid the whole of the amount of each splittable payment that becomes payable—by the non-member spouse.
- (3) A fee payable in respect of an application mentioned in paragraph (1)(e) is payable by the applicant.

### 96 Waiver of rights under payment split

- (1) For the purposes of subsection 90XZA(2) or 90YZQ(2) of the Act, a waiver notice must be in accordance with Form 5 in Schedule 1 to this instrument.
- (2) For the purposes of paragraph 90XZA(2)(a) or 90YZQ(2)(a) of the Act, each of the following persons is a prescribed financial adviser:
  - (a) a person who holds an Australian financial services licence (within the meaning of the *Corporations Act 2001*) covering the provision of advice of the kind mentioned in paragraph 90XZA(2)(a) or 90YZQ(2)(a), as applicable, of the Act;
  - (b) a person who complies with section 911B of the *Corporations Act 2001* when providing a financial service (within the meaning of that Act):
    - (i) that includes providing advice of the kind mentioned in paragraph 90XZA(2)(a) or 90YZQ(2)(a), as applicable, of the Act; and
    - (ii) on behalf of a person who holds an Australian financial services licence (within the meaning of the *Corporations Act 2001*) covering the provision of that financial service.

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## Part 9—Provision of information to and by trustee

### Division 1—Preliminary

#### 97 Simplified outline of this Part

Division 2 prescribes the form for declarations by applicants seeking information, about a superannuation interest of a member of an eligible superannuation plan, from the trustee of the plan under section 90XZB or 90YZR of the Act.

Division 3 sets out the kinds of information about the superannuation interest that the trustee must provide to the applicant. The Subdivisions of Division 3 set out different kinds of information for different kinds of superannuation interests.

The trustee is also required to provide some information about the superannuation interest to the non-member spouse after the operative time for a payment split (see Subdivision J of Division 3).

Note 1: An order relating to the superannuation interest can be expressed to bind the trustee at the time the order takes effect only if the trustee has first been accorded procedural fairness (see section 90XZD or 90YZT of the Act).

Note 2: Ways for serving documents on the trustee include ways under the relevant Rules of Court (see section 90XZF or 90YZV of the Act). The Rules of Court also set out time periods for doing so.

#### 98 Definitions

In this Part:

**appropriate date**, in relation to the information that must be provided by the trustee of an eligible superannuation plan to an applicant, means:

- (a) the date when the application for the information is received by the trustee; or
- (b) if an earlier date is specified in the application—that date.

**preserved benefits** means:

- (a) for a member of a regulated superannuation fund or an approved deposit fund—preserved benefits in relation to the member under Subdivision 6.1.2 of the SIS Regulations; or
- (b) for a member of an RSA—preserved benefits in relation to the member under Subdivision 4.1.2 of the RSA Regulations.

**restricted non-preserved benefits** means:

- (a) for a member of a regulated superannuation fund—restricted non-preserved benefits in relation to the member under Subdivision 6.1.3 of the SIS Regulations; or
- (b) for a member of an RSA—restricted non-preserved benefits in relation to the member under Subdivision 4.1.3 of the RSA Regulations.

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*unrestricted non-preserved benefits* means:

- (a) for a member of a regulated superannuation fund or an approved deposit fund—unrestricted non-preserved benefits in relation to the member under Subdivision 6.1.4 of the SIS Regulations; or
- (b) for a member of an RSA—unrestricted non-preserved benefits in relation to the member under Subdivision 4.1.4 of the RSA Regulations.

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**Part 9** Provision of information to and by trustee

**Division 2** Declaration accompanying application for information about a superannuation interest

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## **Division 2—Declaration accompanying application for information about a superannuation interest**

### **99 Application to trustee for information about a superannuation interest—accompanying declaration**

For the purposes of paragraph 90XZB(2)(a) or 90YZR(2)(a) of the Act, the declaration accompanying an application by an eligible person, under section 90XZB or 90YZR of the Act, must be in accordance with Form 6 in Schedule 1 to this instrument.



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Provision of information to and by trustee **Part 9**  
Information provided by trustee about superannuation interests **Division 3**

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## Division 3—Information provided by trustee about superannuation interests

### Subdivision A—Information about certain accumulation interests

#### 100 Accumulation interests to which this Subdivision applies

- (1) This Subdivision applies for a superannuation interest of a member of an eligible superannuation plan if:
  - (a) the superannuation interest, or a component of the superannuation interest, is an accumulation interest; and
  - (b) the superannuation interest is neither a percentage-only interest nor an interest in a self managed superannuation fund; and
  - (c) Subdivision G does not apply for the superannuation interest.
- (2) In this Subdivision:

**total member credit**, for a superannuation interest of a member and a date, means the total amount that would be standing to the credit of the member in respect of the interest if the benefit in respect of the interest were fully vested at that date.

**valuation date**, for a superannuation interest to which a member information statement for the member spouse applies, means the date as at which the value of the interest, or the total member credit, is stated in the statement.

**value**, of a superannuation interest stated in a statement, means:

- (a) the value of the interest stated in the statement, however described (for example, the member's account balance, share in the plan, withdrawal benefit); or
- (b) if 2 or more values of the interest are stated in the statement—the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest if the member spouse had voluntarily ceased to be a member of the plan at the date at which the value is stated.

#### 101 Information the trustee must provide—overview

- (1) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, the information about the accumulation interest that must be provided by the trustee of the plan in response to an application referred to in that subsection is as follows:
  - (a) if the interest is an unsplitable interest—a statement to that effect;
  - (b) a statement indicating whether the interest is subject to a payment split or payment flag;
  - (c) if the interest is subject to a payment split (other than under a superannuation agreement, flag lifting agreement or splitting order for which the non-member spouse's entitlement has been satisfied as required by Division 2 of Part 3)—the information mentioned in section 105;
  - (d) the date of commencement of the member's service period (within the meaning of the *Income Tax Assessment Act 1997*), if any;

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## Part 9 Provision of information to and by trustee

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- (e) the date when the member first became a member of the plan;
- (f) if the interest was in the payment phase at the appropriate date—the payment phase information mentioned in section 102 for the interest;
- (g) if the interest was in the growth phase at the appropriate date:
  - (i) for an accumulation interest other than a partially vested accumulation interest—the growth phase information mentioned in section 103 for the interest; and
  - (ii) for a partially vested accumulation interest—the growth phase information mentioned in section 104 for the interest;
- (h) if the application specifically requests the trustee to provide information about the withdrawal benefit for the member—the withdrawal benefit for the member at the date when the information is provided;
- (i) details of any fees that may be charged by the trustee under paragraph 95(1)(a), (b), (c), (d) or (f).

- (2) Subsection (1) has effect subject to section 106 (about exceptions).

Example: If the application specifically requests the information mentioned in paragraph (1)(h), the trustee is required to provide only the information mentioned in that paragraph to the applicant. The trustee is not required to provide any other information to the applicant under this Subdivision (see paragraph 106(1)(a)).

#### **102 Specific information—the interest is in the payment phase**

For the purposes of paragraph 101(1)(f), the payment phase information for the superannuation interest is:

- (a) if the member is receiving ongoing pension payments in respect of an allocated pension—the withdrawal benefit for the member at the appropriate date; and
- (b) if the member is receiving ongoing pension payments in respect of a market linked pension—the market linked pension account balance at the appropriate date; and
- (c) if the member is receiving ongoing pension payments in respect of a pension other than an allocated pension or a market linked pension:
  - (i) the amount of annual pension benefit payable to the member at the appropriate date; and
  - (ii) a statement indicating whether the pension benefit is a lifetime pension or a fixed-term pension; and
  - (iii) if the pension is a fixed-term pension—the date when the pension payments commenced, and the length of the fixed term; and
  - (iv) a statement indicating whether the pension benefit is indexed and, if so, the method of indexation; and
  - (v) a statement indicating whether there is any reversionary beneficiary who is a non-member spouse in relation to the pension benefit and, if so, the proportion of the ongoing pension payments that would be payable to the reversionary beneficiary on the death of the member; and
- (d) if a lump sum is payable to the member in respect of the interest at the date when the information is provided or at any later date, and the amount of the lump sum is known—the amount of the lump sum; and

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- (e) if a lump sum (a *future lump sum*) is payable to the member in respect of the interest at a date after the date when the information is provided, and the amount of the lump sum is not known:
  - (i) the amount of the lump sum that would have been paid at the date when the information is provided if a lump sum were payable at that date (the *nominal lump sum*); and
  - (ii) the method that is to be used to index the nominal lump sum to determine the amount of the future lump sum; and
- (f) if a lump sum payment that would have been a superannuation lump sum (within the meaning of the *Income Tax Assessment Act 1997*) had been made in respect of the interest at the date when the information is provided:
  - (i) the amount of the payment; and
  - (ii) the value that the components of the superannuation lump sum would have had under Subdivision 307-C of that Act; and
- (g) a statement:
  - (i) indicating whether the Minister has approved, under section 68, a method or factors for determining the gross value of the interest; and
  - (ii) giving details of any method or factors so approved; and
- (h) if the application for information specifically requests the trustee to provide it and the trustee chooses to do so—the gross value of the interest at the appropriate date, determined in accordance with:
  - (i) whichever of the methods in Division 2 of Part 6 that applies to the interest; or
  - (ii) a method or factors approved by the Minister under section 68.

Note: The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (c)(i) unless a record of it is in the trustee's possession, power or control (see paragraph 106(1)(b)).

## **103 Specific information—the interest is in the growth phase, and is an accumulation interest other than a partially vested accumulation interest**

For the purposes of subparagraph 101(1)(g)(i), the growth phase information for the superannuation interest is as follows:

- (a) the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the appropriate date if the member spouse had voluntarily ceased to be a member of the plan at that date;
- (b) if 2 or more member information statements for the member spouse and the interest have been provided to the member, and the appropriate date is between the valuation date stated in one statement (the *earlier statement*) and the valuation date stated in the next statement (the *next statement*):
  - (i) the value of the interest, as stated in the earlier statement; and
  - (ii) the value of the interest, as stated in the next statement; and
  - (iii) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the earlier statement and ending at the end of the valuation date stated in the next statement;

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- (c) if at least one member information statement for the member spouse and the interest has been provided to the member, and the appropriate date is before the valuation date stated in the first member information statement provided to the member (the *first statement*):
  - (i) the value of the interest, as stated in the first statement; and
  - (ii) the value of the interest at the date when the interest was acquired; and
  - (iii) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the date when the interest was acquired and ending at the end of the valuation date stated in the first statement;
- (d) if at least one member information statement for the member spouse and the interest has been provided to the member, and the appropriate date is after the valuation date stated in the most recent statement:
  - (i) the value of the interest, as stated in the most recent statement; and
  - (ii) the value of the interest at the date when the information is provided; and
  - (iii) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the most recent statement and ending at the end of the day when the information is provided;
- (e) if no member information statement for the member spouse and the interest has been provided to the member:
  - (i) the value of the interest at the date when the interest was acquired; and
  - (ii) the value of the interest at the date when the information is provided; and
  - (iii) the amount, and the date, of any rollover or transfer by the member, or any partial payment to the member, in the period beginning on the day after the date when the interest was acquired and ending at the end of the day when the information is provided;
- (f) if the interest is in a regulated superannuation fund or an RSA:
  - (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if the member were to resign from the member's employment on the date when the information is provided; and
  - (ii) the amount (if any) of the member's unrestricted non-preserved benefits;
- (g) if the interest is in an approved deposit fund—the amount, at the date when the information is provided, of the member's unrestricted non-preserved benefits;
- (h) if:
  - (i) a payment that would have been a superannuation lump sum (within the meaning of the *Income Tax Assessment Act 1997*) had been made in respect of the interest at the date when the information is provided; and

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- (ii) the amount of the payment had been the amount payable to the member if the member had voluntarily ceased to be a member of the plan;  
the value that the components of the superannuation lump sum would have had under Subdivision 307-C of that Act;
- (i) if the trustee has given information under Division 2.5 of the SIS Regulations to each member of the plan that the plan is to be reconstructed or terminated—a statement to this effect.

Note 1: For paragraph (a), the trustee is not required to provide this information unless a record of it is in the trustee's possession, power or control (see paragraph 106(1)(c)).

Note 2: For paragraph (b), (c), (d) or (e), the trustee is required to provide the information mentioned in these paragraphs in certain circumstances only (see paragraph 106(1)(d)).

## **104 Specific information—the interest is in the growth phase, and is a partially vested accumulation interest**

- (1) For the purposes of subparagraph 101(1)(g)(ii), the growth phase information for the superannuation interest is as follows:
  - (a) the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the appropriate date if the member spouse had voluntarily ceased to be a member of the plan at that date;
  - (b) a statement:
    - (i) indicating whether the Minister has approved, under section 62, a method or factors for determining the gross value of the interest; and
    - (ii) giving details of any method or factors so approved;
  - (c) if the application for information specifically requests the trustee to provide it and the trustee chooses to do so—the gross value of the interest at the appropriate date determined in accordance with:
    - (i) Schedule 4; or
    - (ii) a method or factors approved by the Minister under section 62;
  - (d) if 2 or more member information statements for the member spouse and the interest have been provided to the member, and the appropriate date is between the valuation date stated in one statement (the *earlier statement*) and the valuation date stated in the next statement (the *next statement*):
    - (i) the value of the actual vested benefit in respect of the interest, as stated in the earlier statement; and
    - (ii) if stated in the earlier statement, the total member credit at the valuation date stated in that statement; and
    - (iii) the value of the actual vested benefit in respect of the interest, as stated in the next statement; and
    - (iv) if stated in the next statement, the total member credit at the valuation date stated in that statement; and
    - (v) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the earlier statement and ending at the end of the valuation date stated in the next statement;

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- (e) if at least one member information statement for the member spouse and the interest has been provided to the member, and the appropriate date is before the valuation date stated in the first member information statement provided to the member (the *first statement*):
    - (i) the value of the actual vested benefit in respect of the interest, as stated in the first statement; and
    - (ii) if stated in the first statement, the total member credit at the valuation date stated in that statement; and
    - (iii) the value of the actual vested benefit in respect of the interest at the date when the interest was acquired; and
    - (iv) the total member credit at the date when the interest was acquired; and
    - (v) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the date when the interest was acquired and ending at the end of the valuation date stated in the first statement;
  - (f) if at least one member information statement for the member spouse and the interest has been provided to the member, and the appropriate date is after the valuation date stated in the most recent statement:
    - (i) the value of the actual vested benefit in respect of the interest, as stated in the most recent statement; and
    - (ii) if stated in the most recent statement, the total member credit at the valuation date stated in that statement; and
    - (iii) the value of the actual vested benefit in respect of the interest at the date when the information is provided; and
    - (iv) the total member credit at the date when the information is provided; and
    - (v) the amount, and the date, of any rollover or transfer by the member, or partial payment to the member, in the period beginning on the day after the valuation date stated in the most recent statement and ending at the end of the day when the information is provided;
  - (g) if no member information statement for the member spouse and the interest has been provided to the member:
    - (i) the value of the actual vested benefit in respect of the interest at the date when the interest was acquired; and
    - (ii) the total member credit at the date when the interest was acquired; and
    - (iii) the value of the actual vested benefit in respect of the interest at the date when the information is provided; and
    - (iv) the total member credit at the date when the information is provided; and
    - (v) the amount, and the date, of any rollover or transfer by the member, or any partial payment to the member, in the period beginning on the day after the date when the interest was acquired and ending at the end of the day when the information is provided;
  - (h) the vesting term that applies to the interest;
  - (i) the date when the vesting term commenced;
  - (j) if a member information statement for the member spouse and the interest that has been provided to the member does not include the total member credit at the valuation date stated in the statement—that information;
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- (k) if the interest is in a regulated superannuation fund or an RSA:
  - (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if the member were to resign from the member's employment on the date when the information is provided; and
  - (ii) the amount (if any) of the member's unrestricted non-preserved benefits;
- (l) if the interest is in an approved deposit fund—the amount, at the date when the information is provided, of the member's unrestricted non-preserved benefits;
- (m) if:
  - (i) a payment that would have been a superannuation lump sum (within the meaning of the *Income Tax Assessment Act 1997*) had been made in respect of the interest at the date when the information is provided; and
  - (ii) the amount of the payment had been the amount payable to the member if the member had voluntarily ceased to be a member of the plan;  
the value that the components of the superannuation lump sum would have had under Subdivision 307-C of that Act;
- (n) if the trustee has given information under Division 2.5 of the SIS Regulations to each member of the plan that the plan is to be reconstructed or terminated—a statement to this effect.

Note 1: For paragraph (a), the trustee is not required to provide this information unless a record of it is in the trustee's possession, power or control (see paragraph 106(1)(c)).

Note 2: For paragraph (d), (e), (f) or (g), the trustee is required to provide the information mentioned in these paragraphs in certain circumstances only (see paragraph 106(1)(d)).

- (2) If:
  - (a) the trustee, in response to the application:
    - (i) provides the gross value of the interest at the appropriate date determined in accordance with a method or factors approved by the Minister under section 62 (see subparagraph (1)(c)(ii) of this section); but
    - (ii) does not provide sufficient information to enable the applicant to check whether that gross value of the interest has been correctly determined in accordance with the approved method or factors; and
  - (b) the applicant makes a further application that complies with subsection 90XZB(3) or 90YZR(3) of the Act for further information that will enable the applicant to do so;

then, for the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, that further information is information that must be provided by the trustee in response to the further application within a reasonable time.

Note 1: This subsection applies to an interest if a determination has not been made under subsection 106(2) requiring the trustee to give information, not otherwise required under this section, which would enable the applicant to check if the gross value of the interest was correctly determined.

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Note 2: For paragraph (b), section 90XZB or 90YZR of the Act does not prevent the applicant from making further applications, that comply with that section, for information about the superannuation interest.

- (3) Subsection 137(2) applies to further information provided by the trustee to the applicant under subsection (2) of this section.

#### 105 Specific information—the interest is subject to a payment split or flag

For the purposes of paragraph 101(1)(c), the information that must be provided in relation to each payment split to which the superannuation interest is subject is as follows:

- (a) the operative time for the payment split;
- (b) if:
  - (i) the payment split is under subparagraph 90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act; and
  - (ii) the interest was in the payment phase at the appropriate date; the amount that, under subsection 89(6) or 93(3) of this instrument, a person is entitled to be paid from each splittable payment that becomes payable in respect of the interest;
- (c) if the payment split is under subparagraph 90XJ(1)(c)(i) or 90YN(1)(c)(i) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act, and the interest was in the growth phase at the appropriate date:
  - (i) the base amount specified in the relevant superannuation agreement or flag lifting agreement in relation to the interest; and
  - (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
- (d) if the payment split is under subparagraph 90XJ(1)(c)(ii) or 90YN(1)(c)(ii) of the Act and the interest was in the growth phase at the appropriate date:
  - (i) the amount set out in the document served on the trustee under paragraph 90XI(1)(b) or 90YM(1)(b) of the Act; and
  - (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
- (e) if the payment split is under subparagraph 90XJ(1)(c)(iii) or 90YN(1)(c)(iii) of the Act or under a splitting order made under paragraph 90XT(1)(b) or 90YY(1)(b) of the Act—the specified percentage that is to apply to any splittable payment that becomes payable in respect of the interest.

Note: Subparagraphs (c)(ii) and (d)(ii) are referring to the person who is the non-member spouse for the purposes of the payment split.

#### 106 Exceptions and other kinds of required information

- (1) The trustee is not required to provide information in response to an application referred to in section 101 in any of the following circumstances:
- (a) if the application specifically requests the trustee to provide the information mentioned in paragraph 101(1)(h) to the applicant, the trustee



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is not required to provide any other information mentioned in this Subdivision to the applicant;

- (b) the trustee is not required to provide the information mentioned in paragraph 102(a) or subparagraph 102(c)(i) to the applicant unless a record of that information is in the trustee's possession, power or control;
- (c) the trustee is not required to provide the information mentioned in paragraph 103(a) or 104(1)(a), as applicable, to the applicant unless a record of that information is in the trustee's possession, power or control;
- (d) the trustee is not required to provide the information mentioned in paragraph 103(b), (c), (d) or (e) or 104(1)(d), (e), (f) or (g), as applicable, to the applicant unless:
  - (i) the application for information specifically requests the trustee to provide this information; and
  - (ii) a record of the information is in the trustee's possession, power or control; and
  - (iii) a record of the information mentioned in paragraph 103(a) or 104(1)(a), as applicable, is not in the trustee's possession, power or control.

(2) If:

- (a) the superannuation interest, or a component of the superannuation interest, is a partially vested accumulation interest; and
- (b) under section 62, the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest or the component of the interest;

the Minister may, by legislative instrument, determine either or both of the following:

- (c) that the trustee is not required to provide one or more specified kinds of information mentioned in subsection 104(1) about the interest, or the component of the interest;
- (d) that the trustee must provide other specified kinds of information about the interest or the component of the interest.

(3) If, under section 68, the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest, the Minister may, by legislative instrument, determine either or both of the following:

- (a) that the trustee is not required to provide one or more specified kinds of information mentioned in section 101 or 102 about the interest;
- (b) that the trustee must provide one or more other specified kinds of information about the interest.

## **Subdivision B—Information about certain defined benefit interests**

### **107 Defined benefit interests to which this Subdivision applies**

- (1) This Subdivision applies for a superannuation interest of a member of an eligible superannuation plan if:
  - (a) the superannuation interest, or a component of the superannuation interest, is a defined benefit interest; and

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- (b) the superannuation interest is neither a percentage-only interest nor an interest in a self managed superannuation fund; and
- (c) Subdivision G does not apply for the superannuation interest.

### *Meaning of underlying valuation information*

- (2) ***Underlying valuation information***, for a superannuation interest, means:
  - (a) for the gross value of the superannuation interest at the appropriate date, determined in accordance with Schedule 3, being an interest to which paragraph 108(1)(g) applies—the information mentioned in paragraph 110(1)(a), (b), (c), (d), (e), (f), (g), (h), (i) or (j); or
  - (b) for the gross value of the superannuation interest at the appropriate date, determined in accordance with Schedule 3, being an interest to which paragraph 108(1)(h) applies—the information mentioned in subsection 111(2), (3) or (4); or
  - (c) for the gross value of the superannuation interest at the appropriate date, determined in accordance with a method or factors approved by the Minister under section 62:
    - (i) if a determination under subsection 113(2), (3), (4) or (5) is in effect for the interest—information required to be provided under the determination; or
    - (ii) in any other case—information that will enable the applicant to check whether the gross value of the interest has been correctly determined in accordance with the approved method or factors.

## **108 Information the trustee must provide—overview**

- (1) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, the information about the defined benefit interest that must be provided by the trustee of the plan in response to an application referred to in that subsection is as follows:
  - (a) if the interest is an unsplitable interest, a statement to that effect;
  - (b) a statement indicating whether the interest is subject to a payment split or payment flag;
  - (c) if the interest is subject to a payment split (other than under a superannuation agreement, flag lifting agreement or splitting order for which the non-member spouse's entitlement has been satisfied as required by Division 2 of Part 3)—the information mentioned in section 112;
  - (d) the date of commencement of the member's service period (within the meaning of the *Income Tax Assessment Act 1997*), if any;
  - (e) the date when the member first became a member of the plan;
  - (f) if the interest was in the payment phase at the appropriate date—the payment phase information mentioned in section 109 for the interest;
  - (g) if:
    - (i) the interest was in the growth phase at the appropriate date; and
    - (ii) the interest is held by a member as a result of employment in which the member is or was still engaged at the appropriate date;the growth phase information mentioned in section 110 for the interest;

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- (h) if:
  - (i) the interest was in the growth phase at the appropriate date; and
  - (ii) the interest is held by a member as a result of employment in which the member is or was no longer engaged at the appropriate date; and
  - (iii) under the governing rules of the plan, the benefit in respect of the interest is payable after the date when the information is provided;the growth phase information mentioned in section 111 for the interest;
- (i) if the application for information specifically requests the trustee to provide information about the withdrawal benefit for the member—the withdrawal benefit for the member at the date when the information is provided;
- (j) details of any fees that may be charged by the trustee under paragraph 95(1)(a), (b), (c), (d) or (f).

(2) Subsection (1) has effect subject to section 113 (about exceptions).

Example: If the application specifically requests the information mentioned in paragraph (1)(i), the trustee is required to provide only the information mentioned in that paragraph to the applicant. The trustee is not required to provide any other information to the applicant under this Subdivision (see paragraph 113(1)(a)).

Note: This information may not have to be provided by a secondary government trustee (see section 138).

## 109 Specific information—the interest is in the payment phase

- (1) For the purposes of paragraph 108(1)(f), the payment phase information for the superannuation interest is:
  - (a) if the member is receiving ongoing pension payments in respect of an allocated pension—the withdrawal benefit for the member at the appropriate date; and
  - (b) if the member is receiving ongoing pension payments in respect of a market linked pension—the market linked pension account balance at the appropriate date; and
  - (c) if the member is receiving ongoing pension payments in respect of a pension other than an allocated pension or a market linked pension:
    - (i) the amount of annual pension benefit payable to the member at the appropriate date; and
    - (ii) a statement indicating whether the pension benefit is a lifetime pension or a fixed-term pension; and
    - (iii) if the pension is a fixed-term pension—the date when the pension payments commenced, and the length of the fixed term; and
    - (iv) a statement indicating whether the pension benefit is indexed and, if so, the method of indexation; and
    - (v) a statement indicating whether there is any reversionary beneficiary who is a non-member spouse in relation to the pension benefit and, if so, the proportion of the ongoing pension payments that would be payable to the reversionary beneficiary on the death of the member; and
  - (d) if a lump sum is payable to the member in respect of the interest at the date when the information is provided or at any later date, and the amount of the lump sum is known—the amount of the lump sum; and

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- (e) if a lump sum (a *future lump sum*) is payable to the member in respect of the interest at a date after the date when the information is provided, and the amount of the lump sum is not known:
  - (i) the amount of the lump sum that would have been paid at the date when the information is provided if a lump sum were payable at that date (the *nominal lump sum*); and
  - (ii) the method that is to be used to index the nominal lump sum to determine the amount of the future lump sum; and
- (f) if a lump sum payment that would have been a superannuation lump sum (within the meaning of the *Income Tax Assessment Act 1997*) had been made in respect of the interest at the date when the information is provided:
  - (i) the amount of the payment; and
  - (ii) the value that the components of the superannuation lump sum would have had under Subdivision 307-C of that Act; and
- (g) a statement:
  - (i) indicating whether the Minister has approved, under section 68, a method or factors for determining the gross value of the interest; and
  - (ii) giving details of any method or factors so approved; and
- (h) if the application for information specifically requests the trustee to provide it and the trustee chooses to do so—the gross value of the interest at the appropriate date, determined in accordance with:
  - (i) whichever of the methods in Division 2 of Part 6 applies to the interest; or
  - (ii) a method or factors approved by the Minister under section 68.

Note: The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (c)(i) unless a record of it is in the trustee's possession, power or control (see paragraph 113(1)(b)).

- (2) If:
  - (a) paragraph (1)(h) applies to the application for information about the superannuation interest; and
  - (b) the trustee, in response to the application:
    - (i) provides the gross value of the interest at the appropriate date, determined in accordance with a method or factors approved by the Minister under section 68; but
    - (ii) does not provide sufficient information to enable the applicant to check whether that gross value of the interest has been correctly determined in accordance with the approved method or factors; and
  - (c) the applicant makes a further application that complies with subsection 90XZB(3) or 90YZR(3) of the Act for specific underlying valuation information for the interest;

then, for the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, that specific underlying valuation information is information that must be provided by the trustee in response to the further application within a reasonable time.

Note: For paragraph (c), section 90XZB or 90YZR of the Act does not prevent the applicant from making further applications, that comply with that section, for information about the superannuation interest.

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- (3) Subsection 137(2) applies to specific underlying valuation information provided by the trustee to the applicant under subsection (2) of this section.

## **110 Specific information—the interest is in the growth phase and held as a result of employment in which the member is still engaged**

- (1) For the purposes of paragraph 108(1)(g), the growth phase information for the superannuation interest is as follows:
- (a) the member's retirement age;
  - (b) the member spouse's accrued benefit multiple (within the meaning given by section 114) for any lump sum, or pension, payable in respect of the interest;
  - (c) the salary figure, on which any benefit payable in respect of the interest would be based, assuming that the member were eligible to retire at the appropriate date;
  - (d) if:
    - (i) the benefit in respect of the interest is payable as a combination of a lump sum and a pension; and
    - (ii) the governing rules of the plan restrict the proportion of the pension that may be commuted to a lump sum;  
the maximum amount of pension that may be commuted to a lump sum, expressed as a percentage of the amount of the pension that would be payable if the whole benefit were to be taken as a pension;
  - (e) if:
    - (i) the benefit in respect of the interest is payable as a combination of a lump sum and a pension; and
    - (ii) the governing rules of the plan restrict the proportion of the lump sum that may be converted to a pension;  
the maximum amount of the lump sum that may be converted to a pension, expressed as a percentage of the amount of the lump sum that would be payable if the whole benefit were to be taken as a lump sum;
  - (f) if any pension payable in respect of the interest is indexed and, if so, the method of indexation;
  - (g) if any pension payable in respect of the interest has a guarantee period and, if so, the length of the guarantee period;
  - (h) the conversion factor for converting a lump sum to a pension that will apply at the member's retirement age;
  - (i) the commutation factor for commuting a pension to a lump sum that will apply at the member's retirement age;
  - (j) if benefits in respect of the interest may be payable to a reversionary beneficiary who is a non-member spouse—the proportion of payment in respect of the interest that the non-member spouse would receive, as a reversionary beneficiary, on the death of the member;
  - (k) unless the interest is in a constitutionally protected fund—the amount (if any) that was stated to be the surcharge debt of the member in the most recent member information statement for the member spouse and the interest that was provided to the member before the appropriate date;
  - (l) if the interest is in a regulated superannuation fund or an RSA:
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- (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if the member were to resign from the member's employment on the date when the information is provided; and
- (ii) the amount (if any) of the member's unrestricted non-preserved benefits;
- (m) if the interest is in an approved deposit fund—the amount, at the date when the information is provided, of the member's unrestricted non-preserved benefits;
- (n) if:
  - (i) a payment that would have been a superannuation lump sum (within the meaning of the *Income Tax Assessment Act 1997*) had been made in respect of the interest at the date when the information is provided; and
  - (ii) the amount of the payment had been the amount payable to the member if the member had voluntarily ceased to be a member of the plan;the value that the components of the superannuation lump sum would have had under Subdivision 307-C of that Act;
- (o) a statement:
  - (i) indicating whether the Minister has approved, under section 62, a method or factors for determining the gross value of the interest; and
  - (ii) giving details of any method or factors so approved;
- (p) if the trustee has given information under Division 2.5 of the SIS Regulations to each member of the plan that the plan is to be reconstructed or terminated—a statement to this effect;
- (q) if the application for information specifically requests the trustee to provide it and the trustee chooses to do so—the gross value of the interest at the appropriate date, determined in accordance with:
  - (i) Schedule 3; or
  - (ii) a method or factors approved by the Minister under section 62.

Note 1: The trustee is not required to provide the information mentioned in paragraph (b), (c) or (k) to the applicant in certain circumstances (see paragraph 113(1)(d)).

Note 2: For paragraph (c), if for example the benefit payable in respect of the member's superannuation interest relates to the member's final average salary, the salary figure for that paragraph would be the member's final average salary.

- (2) If:
  - (a) paragraph (1)(q) applies to the application for information about the superannuation interest; and
  - (b) the trustee, in response to the application:
    - (i) provides the gross value of the interest at the appropriate date, determined in accordance with a method or factors approved by the Minister under section 62; but
    - (ii) does not provide sufficient information to enable the applicant to check whether that gross value of the interest has been correctly determined in accordance with the approved method or factors; and

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(c) the applicant makes a further application that complies with subsection 90XZB(3) or 90YZR(3) of the Act for specific underlying valuation information for the interest;

then, for the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, that specific underlying valuation information is information that must be provided by the trustee in response to the further application within a reasonable time.

Note: For paragraph (c), section 90XZB or 90YZR of the Act does not prevent the applicant from making further applications, that comply with that section, for information about the superannuation interest.

- (3) However, subsection (2) does not apply to any specific underlying valuation information of the kind mentioned in paragraph (1)(b) or (c) unless a record of that information is in the trustee's possession, power or control.
- (4) Subsection 137(2) applies to specific underlying valuation information provided by the trustee to the applicant under subsection (2) of this section.

### **111 Specific information—the interest is in the growth phase and held as a result of employment in which the member is no longer engaged**

- (1) For the purposes of paragraph 108(1)(h), the growth phase information for the superannuation interest is set out in this section.
- (2) If the benefit in respect of the superannuation interest is payable only as a lump sum, the growth phase information includes:
- (a) if the member were able to take, and did take, the benefit in respect of the interest at the appropriate date, either:
    - (i) the amount of the lump sum that would be payable at the appropriate date; or
    - (ii) if that amount is calculated by reference to the indexation of 2 or more specified lump sums—the amount of each lump sum at the appropriate date;(excluding any superannuation contributions surcharge payable in respect of the interest); and
  - (b) if the amount of the lump sum is calculated by reference to the indexation of the amount of one or more specified lump sums—the method of indexation in respect of each lump sum; and
  - (c) the earliest date when the benefit may be paid to the member (other than for death or disability).
- (3) If the benefit in respect of the superannuation interest is payable only as a pension, the growth phase information includes:
- (a) if the amount of the pension payable is calculated by reference to the conversion of a lump sum amount when the pension begins to be paid:
    - (i) the amount of the lump sum at the appropriate date (excluding any superannuation contributions surcharge payable in respect of the interest), if the member were able to take, and did take, the benefit in respect of the interest at that date; and
    - (ii) if the amount of the lump sum is calculated by reference to the indexation of the lump sum—the method of indexation; and

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- (iii) the factor for converting the lump sum to a pension that will apply at the earliest date when the benefit may be paid to the member (other than for death or disability); and
  - (b) if paragraph (a) does not apply:
    - (i) the amount of the pension at the appropriate date (excluding any superannuation contributions surcharge payable in respect of the interest), if the member were able to take, and did take, the benefit in respect of the interest at that date; and
    - (ii) if the amount of the pension is determined by increasing a fixed amount in accordance with an index until the earliest date when the benefit may be paid to the member (other than for death or disability)—details about the method used to increase the amount of the pension; and
  - (c) if the pension is indexed when it begins to be paid—the method of indexation; and
  - (d) a statement about whether there is any reversionary beneficiary who is a non-member spouse in relation to the pension benefit and, if so, the proportion of the ongoing pension payments that would be payable to the reversionary beneficiary on the death of the member; and
  - (e) the earliest date when the benefit may be paid to the member (other than for death or disability).
- (4) If the benefit in respect of the superannuation interest is payable as a lump sum, a pension, or a combination of a lump sum and a pension, the growth phase information includes:
- (a) the information mentioned in paragraphs 110(1)(d) and (e); and
  - (b) the information mentioned in subsections (2) and (3) of this section.
- (5) In any case, the growth phase information includes:
- (a) the amount (if any) of the member's unrestricted non-preserved benefits at the date when the information is provided; and
  - (b) the information mentioned in paragraphs 110(1)(k), (n), (o), (p) and (q).

**Note:** The trustee is not required to provide the information mentioned in paragraph 110(1)(k) to the applicant in certain circumstances (see paragraph 113(1)(d)).

### **112 Specific information—the interest is subject to a payment split or flag**

For the purposes of paragraph 108(1)(c), the information that must be provided in relation to each payment split to which the superannuation interest is subject is as follows:

- (a) the operative time for the payment split;
- (b) if:
  - (i) the payment split is under subparagraph 90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act; and
  - (ii) the interest was in the payment phase at the appropriate date; the amount that, under subsection 89(6) or 93(3) of this instrument, a person is entitled to be paid from each splittable payment that becomes payable in respect of the interest;



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- (c) if the payment split is under subparagraph 90XJ(1)(c)(i) or 90YN(1)(c)(i) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act, and the interest was in the growth phase at the appropriate date:
  - (i) the base amount specified in the relevant superannuation agreement or flag lifting agreement in relation to the interest; and
  - (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
- (d) if the payment split is under subparagraph 90XJ(1)(c)(ii) or 90YN(1)(c)(ii) of the Act and the interest was in the growth phase at the appropriate date:
  - (i) the amount set out in the document served on the trustee under paragraph 90XI(1)(b) or 90YM(1)(b) of the Act; and
  - (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
- (e) if the payment split is under subparagraph 90XJ(1)(c)(iii) or 90YN(1)(c)(iii) of the Act or under a splitting order made under paragraph 90XT(1)(b) or 90YY(1)(b) of the Act—the specified percentage that is to apply to any splittable payment that becomes payable in respect of the interest.

Note: Subparagraphs (c)(ii) and (d)(ii) are referring to the person who is the non-member spouse for the purposes of the payment split.

## 113 Exceptions and other kinds of required information

### *General exceptions*

- (1) The trustee is not required to provide information in response to an application referred to in section 108 in any of the following circumstances:
  - (a) if the application specifically requests the trustee to provide the information mentioned in paragraph 108(1)(i) to the applicant—the trustee is not required to provide any other information mentioned in this Subdivision to the applicant;
  - (b) the trustee is not required to provide the information mentioned in paragraph 109(1)(a) or subparagraph 109(1)(c)(i) to the applicant unless a record of that information is in the trustee's possession, power or control;
  - (d) the trustee is not required to provide the information mentioned in paragraph 110(1)(b), (c) or (k) to the applicant unless a record of that information is in the trustee's possession, power or control.
- (2) If, under section 62, the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest, or a component of the superannuation interest that is a defined benefit interest, the Minister may, by legislative instrument, determine either or both of the following:
  - (a) that the trustee is not required to provide one or more specified kinds of information mentioned in section 110 or 111 about the interest or the component of the interest;
  - (b) that the trustee must provide other specified kinds of information about the interest or the component of the interest.

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*Superannuation interest made up of a defined benefit interest component and an accumulation interest component (other than a partially vested accumulation interest)*

- (3) If the superannuation interest is made up of components, one of which is an accumulation interest (other than a partially vested accumulation interest), and under section 62 the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest, the Minister may, by legislative instrument, determine one or more of the following:
- (a) that the trustee is not required to provide one or more specified kinds of information mentioned in section 110 about the component of the superannuation interest that is a defined benefit interest;
  - (b) that the trustee is not required to provide one or more specified kinds of information mentioned in section 103 about the component of the superannuation interest that is an accumulation interest;
  - (c) that the trustee must provide other specified kinds of information about the superannuation interest or a component of the superannuation interest.

Note: If the superannuation interest is made up of components, this Subdivision only applies to the superannuation interest if one of the components is a defined benefit interest (see section 107).

*Superannuation interest made up of a defined benefit interest component and a partially vested accumulation interest component*

- (4) If the superannuation interest is made up of components, one of which is a partially vested accumulation interest, and under section 62 the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest, the Minister may, by legislative instrument, determine one or more of the following:
- (a) that the trustee is not required to provide one or more specified kinds of information mentioned in section 110 about the component of the superannuation interest that is a defined benefit interest;
  - (b) that the trustee is not required to provide one or more specified kinds of information mentioned in section 104 about the component of the superannuation interest that is a partially vested accumulation interest;
  - (c) that the trustee must provide other specified kinds of information about the superannuation interest or a component of the superannuation interest.

Note: If the superannuation interest is made up of components, this Subdivision only applies to the superannuation interest if one of the components is a defined benefit interest (see section 107).

*Superannuation interest in the payment phase*

- (5) If, under section 68, the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest, the Minister may, by legislative instrument, determine either or both of the following:
- (a) that the trustee is not required to provide one or more specified kinds of information mentioned in section 108 or 109 about the interest;
  - (b) that the trustee must provide one or more other specified kinds of information about the interest.

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## **114 Interest is in the growth phase and held as a result of employment in which the member is still engaged—meaning of *accrued benefit multiple***

- (1) This section applies for the purposes of paragraph 110(1)(b) for a lump sum, or pension, payable in respect of a superannuation interest of a member in an eligible superannuation plan (the *relevant plan*).
- (2) If an accrued benefit multiple is defined under the governing rules of the relevant plan, the *accrued benefit multiple* is that multiple.
- (3) If subsection (2) does not apply, but a multiple is, under the governing rules of the relevant plan, used to define the benefit payable to the member at the appropriate date, the *accrued benefit multiple* is that multiple.
- (4) If neither subsection (2) nor (3) applies, the *accrued benefit multiple* is:

$$\frac{\text{Multiple to calculate retirement benefit} \times \text{First period}}{\text{Second period}}$$

where:

*multiple to calculate retirement benefit* means:

- (a) if the benefit in respect of the interest is payable as a lump sum—the multiple that will be applied to the member’s salary figure at the member’s earliest retirement date to calculate the lump sum retirement benefit that will be payable to the member at that date; or
- (b) if the benefit in respect of the interest is payable as a pension—the multiple that will be applied to the member’s salary figure at the member’s earliest retirement date to calculate the pension benefit that will be payable to the member at that date.

*first period* means the period:

- (a) starting on the earlier of:
  - (i) the day the member first became a member of the relevant plan; and
  - (ii) the day a benefit began to accrue to the member in respect of the superannuation interest; and
- (b) ending on the day before the appropriate date.

*second period* means the period:

- (a) starting on the earlier of:
  - (i) the day the member first became a member of the relevant plan; and
  - (ii) the day a benefit began to accrue to the member in respect of the superannuation interest; and
- (b) ending on the day before the member’s earliest retirement date.

*member’s earliest retirement date* means the first date when the member could retire and become eligible, under the governing rules of the relevant plan, to be paid a retirement benefit in respect of the member’s superannuation interest in the relevant plan.

- (5) For the purposes of subsection (4), if the member’s benefit in respect of the superannuation interest will, under the governing rules of the relevant plan,

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depend on the amount of contributions made by the member to the plan and no particular rate of contributions is required under the governing rules of the plan, assume that:

- (a) the member has contributed to the plan at the rate that, under the governing rules of the plan, is the standard rate of contributions, unless the member has exercised any election under those rules to contribute at a different rate; or
- (b) if, under the governing rules of the plan, a range of contribution rates is available to the member—the member has contributed to the plan at the mid-point of that range, unless the member has exercised any election under the governing rules of the plan to contribute at a different rate.

### Subdivision C—Information about certain percentage-only interests

#### 115 Percentage-only interests to which this Subdivision applies

This Subdivision applies for a superannuation interest of a member of an eligible superannuation plan if:

- (a) the superannuation interest is a percentage-only interest; and
- (b) the superannuation interest is not an interest in a self managed superannuation fund; and
- (c) Subdivision G does not apply for the superannuation interest.

#### 116 Information the trustee must provide—overview

- (1) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, the information about the superannuation interest that must be provided by the trustee of the plan in response to an application referred to in that subsection is as follows:
  - (a) if the interest is an unsplitable interest, a statement to that effect;
  - (b) a statement indicating whether the interest is subject to a payment split or payment flag;
  - (c) if the interest is subject to a payment split (other than under a superannuation agreement, flag lifting agreement or splitting order for which the non-member spouse's entitlement has been satisfied as required by Division 2 of Part 3)—the information mentioned in section 121;
  - (d) the date of commencement of the member's service period (within the meaning of the *Income Tax Assessment Act 1997*), if any;
  - (e) the date when the member first became a member of the plan;
  - (f) if the interest was in the payment phase at the appropriate date and the member is receiving ongoing pension payments—the payment phase information mentioned in section 117 for the interest;
  - (g) if:
    - (i) the interest is in a superannuation annuity and was in the payment phase at the appropriate date; and
    - (ii) the member is receiving ongoing payments of benefits (*ongoing benefits*) under the annuity;the payment phase information mentioned in section 118 for the interest;

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- (h) if the interest (other than an interest in a deferred annuity) was in the growth phase at the appropriate date—the growth phase information mentioned in section 119 for the interest;
  - (i) if the interest is in a deferred annuity and was in the growth phase at the appropriate date—the growth phase information mentioned in section 120 for the interest;
  - (j) if the application for information specifically requests the trustee to provide information about the withdrawal benefit for the member—the withdrawal benefit for the member at the date when the information is provided;
  - (k) details of any fees that may be charged by the trustee under paragraph 95(1)(a), (b), (c), (d) or (f).
- (2) Subsection (1) has effect subject to section 122 (about exceptions).

Example: If an application for information specifically requests the information mentioned in paragraph (1)(j) to be provided, the trustee is required to provide only the information mentioned in that paragraph and paragraphs 119(d) and (e) to the applicant (see paragraph 122(a)).

### **117 Specific information—the interest is in the payment phase and the member is receiving ongoing pension payments**

For the purposes of paragraph 116(1)(f), the payment phase information for the superannuation interest is:

- (a) if the ongoing pension payments in respect of the interest are in respect of an allocated pension—the withdrawal benefit for the member at the appropriate date; and
- (b) if the ongoing pension payments are in respect of a market linked pension—the market linked pension account balance at the appropriate date; and
- (c) in any other case:
  - (i) the amount of annual pension benefit payable to the member at the appropriate date; and
  - (ii) a statement indicating whether the pension benefit is a lifetime pension or a fixed-term pension; and
  - (iii) if the pension is a fixed-term pension—the date when the pension payments commenced, and the length of the fixed term; and
  - (iv) a statement indicating whether the pension benefit is indexed and, if so, the method of indexation; and
  - (v) a statement indicating whether there is any reversionary beneficiary who is a non-member spouse in relation to the pension benefit and, if so, the proportion of the ongoing pension payments that would be payable to the reversionary beneficiary on the death of the member.

Note: The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (c)(i) unless a record of it is in the trustee's possession, power or control (see paragraph 122(b)).

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### **118 Specific information—the interest is a superannuation annuity in the payment phase and the member is receiving ongoing benefits**

For the purposes of paragraph 116(1)(g), the payment phase information in relation to the superannuation interest is:

- (a) if the ongoing benefits are paid in respect of a superannuation annuity that is an allocated annuity—the withdrawal benefit for the member at the appropriate date; and
- (b) if the ongoing benefits are paid in respect of a superannuation annuity that is a market linked annuity—the market linked annuity account balance at the appropriate date; and
- (c) in any other case:
  - (i) the amount of ongoing benefits payable to the member at the appropriate date; and
  - (ii) a statement indicating whether the superannuation annuity is a lifetime annuity or a fixed-term annuity; and
  - (iii) if the superannuation annuity is a fixed-term annuity—the date when the payment of ongoing benefits commenced, and the length of the fixed term; and
  - (iv) a statement indicating whether the superannuation annuity is indexed and, if so, the method of indexation.

Note: The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (c)(i) unless a record of it is in the trustee's possession, power or control (see paragraph 122(b)).

### **119 Specific information—the interest is in the growth phase and is not an interest in a deferred annuity**

For the purposes of paragraph 116(1)(h), the growth phase information for the superannuation interest is as follows:

- (a) the member's accrued benefit multiple, as defined in the governing rules of the plan, at the appropriate date;
- (b) the salary figure on which any benefit payable in respect of the interest would be based, at the appropriate date;
- (c) unless the interest is in a constitutionally protected fund—the amount (if any) that was stated to be the surcharge debt of the member in the most recent member information statement for the member spouse provided to the member before the appropriate date;
- (d) if the interest is in a regulated superannuation fund or an RSA:
  - (i) the amount of restricted non-preserved benefits that had accrued to the member, and would be payable to the member, if the member were to resign from the member's employment on the date when the information is provided; and
  - (ii) the amount (if any) of the member's unrestricted non-preserved benefits;
- (e) if:
  - (i) a payment that would have been a superannuation lump sum (within the meaning of the *Income Tax Assessment Act 1997*) had been made

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in respect of the interest at the date when the information is provided;  
and

- (ii) the amount of the payment had been the amount payable to the member if the member had voluntarily ceased to be a member of the plan;  
the value that the components of the superannuation lump sum would have had under Subdivision 307-C of that Act;
- (f) if the trustee has given information under Division 2.5 of the SIS Regulations to each member of the plan that the plan is to be reconstructed or terminated—a statement to this effect.

Note: The trustee is not required to provide the information mentioned in paragraph (c) unless a record of it is in the trustee's possession, power or control (see paragraph 122(b)).

## **120 Specific information—the interest is in a deferred annuity and is in the growth phase**

For the purposes of paragraph 116(1)(i), the growth phase information for the superannuation interest is as follows:

- (a) the account balance of the deferred annuity at the appropriate date;
- (b) the information mentioned in subparagraphs 119(d)(i) and (ii) and paragraph 119(e).

## **121 Specific information—the interest is subject to a payment split or flag**

For the purposes of paragraph 116(1)(c), the information that must be provided in relation to each payment split to which the superannuation interest is subject is as follows:

- (a) the operative time for the payment split;
- (b) if the payment split is under paragraph 90XJ(1)(b) or 90YN(1)(b) of the Act:
  - (i) the percentage specified in the relevant superannuation agreement or flag lifting agreement; and
  - (ii) whether that percentage is to apply for the purposes of subparagraph 90XJ(1)(b)(i) or 90YN(1)(b)(i) (as the case may be) of the Act and, if so, the member's accrued benefit multiple at separation (within the meaning of section 41 of this instrument) for the non-member spouse who has an entitlement under the payment split;
- (c) if the payment split is under a splitting order made under paragraph 90XT(1)(b) or 90YY(1)(b) of the Act:
  - (i) a statement indicating that the splitting order is made under that provision of the Act; and
  - (ii) the specified percentage that is to apply to any splittable payment that becomes payable in respect of the interest;
- (d) if the payment split is under a splitting order made under paragraph 90XT(1)(c) or 90YY(1)(c) of the Act:
  - (i) a statement indicating that the splitting order is made under that provision of the Act; and
  - (ii) the percentage specified in the order; and

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- (iii) if the superannuation interest is in an eligible superannuation plan other than a superannuation annuity—the member’s accrued benefit multiple at separation (within the meaning of section 49 of this instrument) for the non-member spouse who has an entitlement under the payment split.

### 122 Exceptions

The trustee is not required to provide information in response to an application referred to in section 116 in any of the following circumstances:

- (a) if the application specifically requests the trustee to provide the information mentioned in paragraph 116(1)(j) to the applicant:
  - (i) the trustee is required to provide the applicant only with the information mentioned in that paragraph and paragraphs 119(d) and (e); and
  - (ii) the trustee is not required to provide the applicant with any other information mentioned in this Subdivision;
- (b) the trustee is not required to provide the applicant with information mentioned in any of the following provisions unless a record of that information is in the trustee’s possession, power or control:
  - (i) paragraph 117(a);
  - (ii) subparagraph 117(c)(i);
  - (iii) paragraph 118(a);
  - (iv) subparagraph 118(c)(i);
  - (v) paragraph 119(c);
  - (vi) paragraph 120(a).

### Subdivision D—Information about certain innovative superannuation interests

#### 123 Innovative superannuation interests to which this Subdivision applies

This Subdivision applies for a superannuation interest of a member of an eligible superannuation plan if:

- (a) the superannuation interest, or a component of the superannuation interest, is an innovative superannuation interest; and
- (b) the superannuation interest is neither a percentage-only interest nor an interest in a self managed superannuation fund; and
- (c) Subdivision G does not apply for the superannuation interest.

#### 124 Information the trustee must provide—overview

- (1) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, the information about the innovative superannuation interest that must be provided by the trustee of the plan in response to an application referred to in that subsection is as follows:
  - (a) if the interest is an unsplitable interest, a statement to that effect;



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- (b) a statement indicating whether the interest is subject to a payment split or payment flag;
  - (c) if the interest is subject to a payment split (other than under a superannuation agreement, flag lifting agreement or splitting order in relation to which the non-member spouse's entitlement has been satisfied as required by Division 2 of Part 3)—the information mentioned in section 127;
  - (d) the date of commencement of the member's service period (within the meaning of the *Income Tax Assessment Act 1997*), if any;
  - (e) the date when the member first became a member of the plan;
  - (f) if the interest was in the payment phase at the appropriate date—the payment phase information mentioned in section 125 for the interest;
  - (g) if the interest was in the growth phase at the appropriate date—the growth phase information mentioned in section 126 for the interest;
  - (h) if the application for information specifically requests the trustee to provide information about the withdrawal benefit for the member—the withdrawal benefit for the member at the date when the information is provided;
  - (i) details of any fees that may be charged by the trustee under paragraph 95(1)(a), (b), (c), (d) or (f).
- (2) Subsection (1) has effect subject to section 128 (about exceptions).

**Example:** If the application specifically requests the information mentioned in paragraph (1)(h), the trustee is required to provide only the information mentioned in that paragraph to the applicant. The trustee is not required to provide any other information to the applicant under this Subdivision (see paragraph 128(1)(a)).

**Note:** This information may not have to be provided by a secondary government trustee—see section 138.

### 125 Specific information—the interest is in the payment phase

For the purposes of paragraph 124(1)(f), the payment phase information for the superannuation interest is:

- (a) a statement indicating that the member is receiving ongoing pension payments in respect of the interest; and
- (b) the amount of annual pension benefit payable to the member at the appropriate date; and
- (c) a statement indicating whether the pension benefit is indexed and, if so, the method of indexation; and
- (d) a statement indicating whether there is any reversionary beneficiary who is a non-member spouse in relation to the pension benefit and, if so, the proportion of the ongoing pension payments that would be payable to the reversionary beneficiary on the death of the member; and
- (e) a statement:
  - (i) indicating whether the Minister has approved, under section 68, a method or factors for determining the gross value of the interest; and
  - (ii) giving details of any method or factors so approved; and
  - (iii) giving details of any other information necessary for determining the gross value of the interest; and

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- (f) if the application for information specifically requests the trustee to provide it and the trustee chooses to do so—the gross value of the interest at the appropriate date, determined in accordance with Division 2 of Part 6.

### **126 Specific information—the interest is in the growth phase**

For the purposes of paragraph 124(1)(g), the growth phase information for the superannuation interest is as follows:

- (a) if any pension payable in respect of the interest is indexed and, if so, the method of indexation;
- (b) if any pension payable in respect of the interest has a guarantee period and, if so, the length of the guarantee period;
- (c) if benefits in respect of the interest may be payable to a reversionary beneficiary who is a non-member spouse—the proportion of payment in respect of the interest that the non-member spouse would receive, as a reversionary beneficiary, on the death of the member;
- (d) unless the interest is in a constitutionally protected fund—the amount (if any) that was stated to be the surcharge debt of the member in the most recent member information statement for the member spouse and the interest that was provided to the member before the appropriate date;
- (e) a statement:
  - (i) indicating whether the Minister has approved, under section 62, a method or factors for determining the gross value of the interest; and
  - (ii) giving details of any method or factors so approved; and
  - (iii) giving details of any other information necessary for determining the gross value of the interest;
- (f) if the trustee has given information under Division 2.5 of the SIS Regulations to each member of the plan that the plan is to be reconstructed or terminated—a statement to this effect; and
- (g) if the application for information specifically requests the trustee to provide it and the trustee chooses to do so—the gross value of the interest at the appropriate date, determined in accordance with Division 1 of Part 6.

Note: The trustee is not required to provide the information mentioned in paragraph (d) to the applicant in certain circumstances (see paragraph 128(1)(d)).

### **127 Specific information—the interest is subject to a payment split or flag**

For the purposes of paragraph 124(1)(c), the information that must be provided in relation to each payment split to which the superannuation interest is subject is as follows:

- (a) the operative time for the payment split;
- (b) if:
  - (i) the payment split is under subparagraph 90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act; and
  - (ii) the interest was in the payment phase at the appropriate date;

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- the amount that, under subsection 89(6) or 93(3) of this instrument, a person is entitled to be paid from each splittable payment that becomes payable in respect of the interest;
- (c) if the payment split is under subparagraph 90XJ(1)(c)(i) or 90YN(1)(c)(i) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act, and the interest was in the growth phase at the appropriate date:
    - (i) the base amount specified in the relevant superannuation agreement or flag lifting agreement in relation to the interest; and
    - (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
  - (d) if the payment split is under subparagraph 90XJ(1)(c)(ii) or 90YN(1)(c)(ii) of the Act and the interest was in the growth phase at the appropriate date:
    - (i) the amount set out in the document served on the trustee under paragraph 90XI(1)(b) or 90YM(1)(b) of the Act; and
    - (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
  - (e) if the payment split is under subparagraph 90XJ(1)(c)(iii) or 90YN(1)(c)(iii) of the Act or under a splitting order made under paragraph 90XT(1)(b) or 90YY(1)(b) of the Act—the specified percentage that is to apply to any splittable payment that becomes payable in respect of the interest.

Note: Subparagraphs (c)(ii) and (d)(ii) are referring to the person who is the non-member spouse for the purposes of the payment split.

### 128 Exceptions and other kinds of required information

- (1) The trustee is not required to provide information in response to an application referred to in section 124 in any of the following circumstances:
    - (a) if the application for information specifically requests the trustee to provide the information mentioned in paragraph 124(1)(h) to the applicant—the trustee is not required to provide any other information mentioned in this Subdivision to the applicant;
    - (d) the trustee is not required to provide the information mentioned in paragraph 126(d) to the applicant unless a record of that information is in the trustee's possession, power or control.
  - (2) If, under section 62, the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest, or a component of the superannuation interest that is an innovative superannuation interest, the Minister may, by legislative instrument, determine either or both of the following:
    - (a) that the trustee is not required to provide one or more specified kinds of information mentioned in section 126 about the interest or the component of the interest;
    - (b) that the trustee must provide other specified kinds of information about the interest or the component of the interest.
  - (3) If, under section 68, the Minister has approved a method or factors to be used to determine the gross value of the superannuation interest, the Minister may, by legislative instrument, determine either or both of the following:
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- (a) that the trustee is not required to provide one or more specified kinds of information mentioned in section 124 or 125 about the interest;
- (b) that the trustee must provide one or more other specified kinds of information about the interest.

### **Subdivision E—Information about interests in self managed superannuation funds**

#### **129 Interests in self managed superannuation funds to which this Subdivision applies**

This Subdivision applies for a superannuation interest of a member of an eligible superannuation plan if:

- (a) the plan is a self managed superannuation fund; and
- (b) Subdivision G does not apply for the superannuation interest.

#### **130 Information the trustee must provide—overview**

- (1) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, the information about the superannuation interest that must be provided by the trustee of the plan in response to an application referred to in that subsection is as follows:
  - (a) if the interest is an unsplitable interest, a statement to that effect;
  - (b) a statement indicating whether the interest is subject to a payment split or payment flag;
  - (c) if the interest is subject to a payment split (other than under a superannuation agreement, flag lifting agreement or splitting order in relation to which the non-member spouse's entitlement has been satisfied as required by Division 2 of Part 3)—the information mentioned in section 132;
  - (d) the date of commencement of the member's service period (within the meaning of the *Income Tax Assessment Act 1997*), if any;
  - (e) the date when the member first became a member of the plan;
  - (f) if the interest was in the payment phase at the appropriate date and the member is receiving ongoing pension payments—the payment phase information mentioned in section 131 for the interest;
  - (g) if the interest was in the growth phase at the appropriate date and the trustee has given information, under Division 2.5 of the SIS Regulations, to each member of the plan that the plan is to be reconstructed or terminated—a statement to this effect;
  - (h) if the application for information specifically requests the trustee to provide information about the withdrawal benefit for the member—the withdrawal benefit for the member at the date when the information is provided;
  - (i) if requested by the applicant—a copy of the governing rules of the plan;
  - (j) details of any fees that may be charged by the trustee under paragraph 95(1)(a), (b), (c), (d) or (f).
- (2) Subsection (1) has effect subject to section 133 (about exceptions).

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Note: If an application for information specifically requests the information mentioned in paragraph (1)(h) to be provided, the trustee is not required to provide any other information to the applicant under this Subdivision (see paragraph 133(a)).

### **131 Specific information—the interest is in the payment phase and the member is receiving ongoing pension payments**

For the purposes of paragraph 130(1)(f), the payment phase information for the superannuation interest is:

- (a) if the ongoing pension payments in respect of the interest are in respect of an allocated pension—the withdrawal benefit for the member at the appropriate date; and
- (b) if the ongoing pension payments are in respect of a market linked pension—the market linked pension account balance at the appropriate date; and
- (c) in any other case:
  - (i) the amount of annual pension benefit payable to the member at the appropriate date; and
  - (ii) a statement indicating whether the pension benefit is a lifetime pension or a fixed-term pension; and
  - (iii) if the pension is a fixed-term pension—the date when the pension payments commenced, and the length of the fixed term; and
  - (iv) a statement indicating whether the pension benefit is indexed and, if so, the method of indexation.

Note: The trustee is not required to provide the information mentioned in paragraph (a) or subparagraph (c)(i) unless a record of it is in the trustee's possession, power or control (see paragraph 133(b)).

### **132 Specific information—the interest is subject to a payment split or flag**

For the purposes of paragraph 130(1)(c), the information that must be provided in relation to each payment split to which the superannuation interest is subject is as follows:

- (a) the operative time for the payment split;
- (b) if:
  - (i) the payment split is under subparagraph 90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act; and
  - (ii) the interest was in the payment phase at the appropriate date; the amount that, under subsection 89(6) or 93(3), a person is entitled to be paid from each splittable payment that becomes payable in respect of the interest;
- (c) if the payment split is under subparagraph 90XJ(1)(c)(i) or 90YN(1)(c)(i) of the Act, or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act, and the interest was in the growth phase at the appropriate date:
  - (i) the base amount specified in the relevant superannuation agreement or flag lifting agreement in relation to the interest; and

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- (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
- (d) if the payment split is under subparagraph 90XJ(1)(c)(ii) or 90YN(1)(c)(ii) of the Act and the interest was in the growth phase at the appropriate date:
  - (i) the amount set out in the document served on the trustee under paragraph 90XI(1)(b) or 90YM(1)(b) of the Act; and
  - (ii) if applicable, the adjusted base amount applicable to the non-member spouse at the appropriate date;
- (e) if the payment split is under subparagraph 90XJ(1)(c)(iii) or 90YN(1)(c)(iii) of the Act or under a splitting order made under paragraph 90XT(1)(b) or 90YY(1)(b) of the Act—the specified percentage that is to apply to any splittable payment that becomes payable in respect of the interest.

Note: Subparagraphs (c)(ii) and (d)(ii) are referring to the person who is the non-member spouse for the purposes of the payment split.

### 133 Exceptions

The trustee is not required to provide information in response to an application referred to in section 130 in any of the following circumstances:

- (a) if the application specifically requests the trustee to provide the information mentioned in paragraph 130(1)(h) to the applicant—the trustee is not required to provide the applicant with any other information mentioned in this Subdivision;
- (b) the trustee is not required to provide the applicant with the information mentioned in paragraph 131(a) or subparagraph 131(c)(i) unless a record of that information is in the trustee's possession, power or control.

### **Subdivision F—Information about small superannuation accounts interests**

#### **134 Interests in small superannuation accounts to which this Subdivision applies**

- (1) This Subdivision applies for a superannuation interest of a member of an eligible superannuation plan if the plan is an account within the meaning of the *Small Superannuation Accounts Act 1995*.
- (2) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, the information about the superannuation interest that must be provided by the trustee of the plan in response to an application referred to in that subsection is a statement setting out the amount of the account balance of the member's account at the date when the application is received by the trustee.

### **Subdivision G—Information about certain interests for which an agreement or splitting order applies**

#### **135 Interests to which this Subdivision applies**

- (1) This Subdivision applies for a superannuation interest of a member of an eligible superannuation plan if subsection (2) or (3) applies for the interest.

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Provision of information to and by trustee **Part 9**  
Information provided by trustee about superannuation interests **Division 3**

Section 136

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- (2) This subsection applies for a superannuation interest of a member of an eligible superannuation plan if:
  - (a) the interest is identified in a superannuation agreement or flag lifting agreement; and
  - (b) the agreement specifies:
    - (i) under subparagraph 90XJ(1)(c)(i) or 90YN(1)(c)(i) of the Act, an amount as a base amount; or
    - (ii) under subparagraph 90XJ(1)(c)(ii) or 90YN(1)(c)(ii) of the Act, a method by which such a base amount can be calculated; and
  - (c) the agreement has been served on the trustee of the plan in accordance with section 90XI or 90YM of the Act; and
  - (d) the agreement does not relate to an earlier marriage or de facto relationship of the member spouse; and
  - (e) the agreement has not been terminated or set aside.
- (3) This subsection applies for a superannuation interest of a member of an eligible superannuation plan if:
  - (a) a splitting order in relation to the interest has been made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act; and
  - (b) the order does not relate to an earlier marriage or de facto relationship of the member spouse; and
  - (c) the order has not been set aside.

## 136 Information the trustee must provide

For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, the information about the superannuation interest that must be provided by the trustee of the plan in response to an application:

- (a) referred to in that subsection; and
- (b) by a person who is entitled to be paid an amount whenever a splittable payment becomes payable in respect of the interest;

is the applicable commutation factor, at the date when the application is received by the trustee and at the next 2 anniversaries of that date, for converting any pension benefit payable in respect of the interest to a lump sum.

## Subdivision H—How and when trustee must provide information

### 137 How and when trustee must provide information

- (1) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, information mentioned in this Division that must be provided by a trustee in response to an application referred to in that subsection is to be provided:
  - (a) in a document addressed to the applicant; and
  - (b) by giving that document to the applicant within a reasonable time after the application is received by the trustee.

Note: **Document** is defined in section 2B of the *Acts Interpretation Act 1901*. See also sections 28A and 29 of that Act for ways of giving a document to a person.

- (2) Such a document is prima facie evidence:

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- (a) of the information stated in it; and
- (b) that the document was provided to the applicant.

### **Subdivision I—Certain secondary government trustees not required to provide information**

#### **138 Certain secondary government trustees not required to provide information**

- (1) For the purposes of subsection 90XZB(3) or 90YZR(3) of the Act, despite any other Subdivision of this Division, a secondary government trustee of an eligible superannuation plan is not required to provide any information:
  - (a) in response to an application referred to in that subsection; and
  - (b) about a superannuation interest of a member of the plan.
- (2) Subsection (1) does not apply to a secondary government trustee of the scheme constituted by the *Parliamentary Contributory Superannuation Act 1948*.

### **Subdivision J—Information provided by trustee to non-member spouse**

#### **139 Information to be provided to the non-member spouse by the trustee after service of agreement or order**

- (1) For the purposes of subsection 90XZB(7) or 90YZR(7) of the Act, a person contravenes this subsection if:
  - (a) the person is the trustee of an eligible superannuation plan, other than:
    - (i) a regulated superannuation fund; or
    - (ii) an approved deposit fund; or
    - (iii) an RSA; or
    - (iv) an account within the meaning of the *Small Superannuation Accounts Act 1995*; and
  - (b) the person is served with a copy of a superannuation agreement, or of a flag lifting agreement or splitting order, that deals with a member spouse's superannuation interest in the plan; and
  - (c) the person fails to, as soon as practicable after the operative time for the payment split under the agreement or order, give to the non-member spouse for the superannuation interest a written notice stating the information mentioned in subsection (2).
- (2) For the purposes of paragraph (1)(c), the information is as follows:
  - (a) the contact details for the plan;
  - (b) if the interest is not a percentage-only interest:
    - (i) the base amount (if any) allocated to the non-member spouse under the agreement or order; and
    - (ii) the method by which the base amount (if any) will be adjusted on an ongoing basis; and
    - (iii) the percentage (if any) specified in the agreement or order that is to apply to all splittable payments in respect of the interest;
  - (c) if the interest is a percentage-only interest:



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- (i) the percentage specified in the agreement or order; and
- (ii) if the payment split is under a superannuation agreement or flag lifting agreement—whether the percentage is to apply for the purposes of subparagraph 90XJ(1)(b)(i) or 90YN(1)(b)(i) (as the case may be) of the Act; and
- (iii) if the payment split is under a splitting order—whether the order is made under paragraph 90XT(1)(c) or 90YY(1)(c) (as the case may be) of the Act;
- (d) the circumstances in which the entitlement of the non-member spouse will become payable;
- (e) details of any fee payable by the non-member spouse under section 95, and arrangements for the payment of any such fee.

## **140 Information to be provided to non-member spouse by the trustee at end of each financial year**

- (1) For the purposes of subsection 90XZB(7) or 90YZR(7) of the Act, a person contravenes this subsection if:
  - (a) the person is the trustee of an eligible superannuation plan; and
  - (b) the plan is a superannuation fund that is not a regulated superannuation fund; and
  - (c) a member spouse's superannuation interest in the plan:
    - (i) is not a percentage-only interest; and
    - (ii) is subject to a payment split under subparagraph 90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii) of the Act or under a splitting order made under paragraph 90XT(1)(a) or 90YY(1)(a) of the Act; and
    - (iii) is in the growth phase during a particular financial year; and
  - (d) the payment split is not under a superannuation agreement, or flag lifting agreement or splitting order, for which the non-member spouse's entitlement has been satisfied as required by Division 2 of Part 3 of this instrument; and
  - (e) the person fails to, before the end of the 6-month period starting at the end of the financial year, give to the non-member spouse for the superannuation interest a written notice stating the information mentioned in subsection (2) of this section.

Penalty: 1 penalty unit.

- (2) For the purposes of paragraph (1)(e), the information is as follows:
  - (a) the value of the adjusted base amount applicable to the non-member spouse at the end of the financial year;
  - (b) the amount of the adjustment in the financial year;
  - (c) the interest rate that applied, under section 74, to the superannuation interest for the financial year.

## **141 Notice to trustee by or for non-member spouse**

- (1) The non-member spouse for a superannuation interest that:
  - (a) is held in an eligible superannuation plan; and

# EXPOSURE DRAFT

**Part 9** Provision of information to and by trustee

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## Section 141

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- (b) is subject to a payment split or payment flag;  
must ensure the trustee of that plan is given a written notice, for the non-member spouse, of the information mentioned in subsection (2).
- (2) The information is:
- (a) the full name of the non-member spouse; and
  - (b) if the non-member spouse chooses to be represented by a legal representative, support worker or other person or organisation—the full name of that representative; and
  - (c) a postal or email address of:
    - (i) the non-member spouse; or
    - (ii) if a representative has been chosen under paragraph (b)—that representative; and
  - (d) if the interest is subject to a payment split:
    - (i) the non-member spouse's date of birth; and
    - (ii) whether the non-member spouse is a member of that plan; and
  - (e) the date the notice is given to the trustee of that plan.
- (3) The information is to be given to the trustee as soon as practicable after:
- (a) the day the copy of the relevant superannuation agreement, flag lifting agreement or payment flag is served on the trustee; or
  - (b) the day the splitting order is made.
- (4) If any of the information changes after it is given to the trustee, the non-member spouse must ensure the trustee is given a written notice of the changed information as soon as practicable.

# EXPOSURE DRAFT

Transitional arrangements **Part 10**  
Transitional arrangements for the commencement of this instrument **Division 1**

Section 142

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## **Part 10—Transitional arrangements**

### **Division 1—Transitional arrangements for the commencement of this instrument**

#### **142 Things done under the *Family Law (Superannuation) Regulations 2001***

- (1) If:
- (a) a thing was done for a particular purpose under the *Family Law (Superannuation) Regulations 2001* as in force immediately before those Regulations were repealed; and
  - (b) the thing could be done for that purpose under this instrument;
- the thing has effect for the purposes of this instrument as if it had been done under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to an approval, notice, application or other instrument being made or given.

Note: This section continues in existence, for example, an approval by the Minister under section 38 of the *Family Law (Superannuation) Regulations 2001*.

#### **143 Only certain superannuation interests in the scheme constituted by the *Parliamentary Contributory Superannuation Act 1948* are covered by subparagraph 14(1)(b)(ii) of this instrument**

Subparagraph 14(1)(b)(ii) applies in relation to a superannuation interest identified in an agreement or a court order under Part VIII B or VIII C of the Act that:

- (a) provides for a payment split in respect of that interest; and
- (b) is made on or after 18 October 2023.

Note: 18 October 2023 is the day the *Family Law (Superannuation) Amendment (Unsplittable Interests) Regulations 2023* commenced, which inserted an equivalent provision to subparagraph 14(1)(b)(ii) into the *Family Law (Superannuation) Regulations 2001*.

# EXPOSURE DRAFT

## Schedule 1 Forms

**Form 1** Notice to trustee that non-member spouse's entitlement under agreement or order satisfied

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## Schedule 1—Forms

### Form 1—Notice to trustee that non-member spouse's entitlement under agreement or order satisfied

(subsections 36(2) and (3))

#### NOTICE TO TRUSTEE THAT NON-MEMBER SPOUSE'S ENTITLEMENT IS SATISFIED IN RESPECT OF PARTICULAR PAYMENT SPLIT

TO the trustee of [*name of eligible superannuation plan*]:

IN RELATION TO the payment split, of which you were notified on [*date when superannuation agreement, flag lifting agreement or splitting order was served on the trustee*], in respect of the superannuation interest of [*name of member spouse*], date of birth [*date of birth of member spouse*]

#### Part A—Superannuation interest in a regulated superannuation fund, exempt public sector superannuation scheme, approved deposit fund, RSA or superannuation annuity

[*Complete Part A if the superannuation interest is in a regulated superannuation fund, exempt public sector superannuation scheme, approved deposit fund, RSA or superannuation annuity*]

I, [*name*], the non-member spouse in relation to the above superannuation interest, of [*postal address*], born on [*date of birth*], give notice that:

\*1. I have received from [*name of member spouse*] the amount of [*amount*] in satisfaction of my entitlement in respect of the payment split.

OR

\*1. [*Name of member spouse*] has paid the amount of [*amount*] to a regulated superannuation fund or an RSA, to be held for my benefit, in satisfaction of my entitlement in respect of the payment split.

2. I received independent legal advice from a legal practitioner explaining that the payment to me is in substitution for:

- (a) any entitlement I have to receive an amount of money from a splittable payment that becomes payable in respect of the superannuation interest; or
- (b) any right I have to make a request under the payment split provisions of the *Superannuation Industry (Supervision) Regulations 1994* to have a new interest created in the eligible superannuation plan in which the member spouse has the superannuation interest, or to request the trustee of that plan to transfer an amount to another eligible superannuation plan to be held for my benefit.

# EXPOSURE DRAFT

Forms **Schedule 1**

Notice to trustee that non-member spouse's entitlement under agreement or order satisfied **Form 1**

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## **Part B—Superannuation interest in a superannuation fund other than an interest in a regulated superannuation fund or an exempt public sector superannuation scheme**

*[Complete Part B if the superannuation interest is in a superannuation fund that is not a regulated superannuation fund or exempt public sector superannuation scheme]*

I, *[name]*, the non-member spouse in relation to the above superannuation interest, of *[postal address]*, born on *[date of birth]*, give notice that:

1. I have received from *[name of member spouse]* the amount of *[amount]* in satisfaction of my entitlement in respect of the payment split.
2. I received independent legal advice from a legal practitioner explaining that the payment to me is in substitution for any entitlement I have to receive an amount of money from a splittable payment that becomes payable in respect of the superannuation interest.

DATED:

*[signature of non-member spouse]*

\* *Omit if not applicable*

# EXPOSURE DRAFT

Schedule 1 Forms

**Form 2** Request to trustee by non-member spouse for payment, as lump sum, of all or part of remaining adjusted base amount

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## Form 2—Request to trustee by non-member spouse for payment, as lump sum, of all or part of remaining adjusted base amount

(section 79)

### REQUEST TO TRUSTEE BY NON-MEMBER SPOUSE FOR PAYMENT, AS LUMP SUM, OF ALL OR PART OF REMAINING ADJUSTED BASE AMOUNT

TO the trustee of [*name of eligible superannuation plan*]:

IN RELATION TO the payment split, of which you were notified on [*date when superannuation agreement, flag lifting agreement or splitting order was served on the trustee*], in respect of the superannuation interest of [*name of member spouse*], date of birth [*date of birth of member spouse*]

I, [*name*], the non-member spouse in relation to the above superannuation interest, of [*postal address*], born on [*date of birth*], being entitled to be paid, as a lump sum, an amount under paragraph 78(2)(a) of the *Family Law (Superannuation) Regulations 2024*, request that I be paid, as a further lump sum, \*the whole/\*a specified proportion, being [*specify the proportion that is to be paid as a lump sum*], of the remaining amount of the adjusted base amount applicable to me.

DATED:

[*signature of non-member spouse*]

\* Omit if not applicable

# EXPOSURE DRAFT

Forms **Schedule 1**

Request to trustee by non-member spouse for payment, as lump sum, of all or part of adjusted base amount **Form 3**

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## **Form 3—Request to trustee by non-member spouse for payment, as lump sum, of all or part of adjusted base amount**

(sections 80 and 81)

### **REQUEST TO TRUSTEE BY NON-MEMBER SPOUSE FOR PAYMENT, AS LUMP SUM, OF ALL OR PART OF ADJUSTED BASE AMOUNT**

TO the trustee of [*name of eligible superannuation plan*]:

IN RELATION TO the payment split, of which you were notified on [*date when superannuation agreement, flag lifting agreement or splitting order was served on the trustee*], in respect of the superannuation interest of [*name of member spouse*], date of birth [*date of birth of member spouse*]

I, [*name*], the non-member spouse in relation to the above superannuation interest, of [*postal address*], born on [*date of birth*], request that I be paid, as a lump sum, <sup>\*</sup>the whole/<sup>\*</sup>a specified proportion, being [*specify the proportion that is to be paid as a lump sum*], of the amount of the adjusted base amount applicable to me.

DATED:

[*signature of non-member spouse*]

\* *Omit if not applicable*

# EXPOSURE DRAFT

Schedule 1 Forms

**Form 4** Request to trustee by non-member spouse for payment, as lump sum, of all or part of remaining base amount

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## Form 4—Request to trustee by non-member spouse for payment, as lump sum, of all or part of remaining base amount

(section 89)

### REQUEST TO TRUSTEE BY NON-MEMBER SPOUSE FOR PAYMENT, AS LUMP SUM, OF ALL OR PART OF REMAINING BASE AMOUNT

TO the trustee of [*name of eligible superannuation plan*]:

IN RELATION TO the payment split, of which you were notified on [*date when superannuation agreement, flag lifting agreement or splitting order was served on the trustee*], in respect of the superannuation interest of [*name of member spouse*], date of birth [*date of birth of member spouse*]

I, [*name*], the non-member spouse in relation to the above superannuation interest, of [*postal address*], born on [*date of birth*], being entitled to be paid an amount under paragraph 88(2)(a) of the *Family Law (Superannuation) Regulations 2024*, request that I be paid, as a further lump sum, \*the whole/\*a specified proportion, being [*specify the proportion that is to be paid as a lump sum*], of the remaining base amount allocated to me in relation to the superannuation interest.

DATED:

[*signature of non-member spouse*]

\* *Omit if not applicable*



# EXPOSURE DRAFT

Forms **Schedule 1**  
Waiver notice in respect of payment split **Form 5**

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## Form 5—Waiver notice in respect of payment split

(section 96)

*Family Law Act 1975 subsection 90XZA(2) or 90YZQ(2)*

### WAIVER NOTICE

TO the trustee of [*name of eligible superannuation plan*]:

IN RELATION TO the payment split, of which you were notified on [*date when superannuation agreement, flag lifting agreement or splitting order was served on the trustee*], in respect of the superannuation interest of [*name of member spouse*], date of birth [*date of birth of member spouse*]

I, [*name*], of [*postal address*], born on [*date of birth*], give notice that I waive my entitlement to future payments under that payment split.

DATED:

[*signature of non-member spouse*]

# EXPOSURE DRAFT

# EXPOSURE DRAFT

Schedule 1 Forms

**Form 6** Declaration to accompany application to trustee for information about a superannuation interest

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## Form 6—Declaration to accompany application to trustee for information about a superannuation interest

(section 99)

*Family Law Act 1975 subsection 90XZB(2) or 90YZR(2)*

### DECLARATION BY APPLICANT FOR INFORMATION ABOUT A SUPERANNUATION INTEREST

I, [name], of [postal address], born on [date of birth], make the following declaration in support of my application to the trustee of [name of eligible superannuation plan from which information is sought] (the **plan**) for information about:

- \* (a) my superannuation interest.
- \* (b) a superannuation interest of [full name of member], born on [date of birth of member], who is a member of the plan.

1. I am:

- \* (a) a member of the plan.
- \* (b) the spouse of [name], who is a member of the plan.
- \* (c) intending to enter into a superannuation agreement under [Part VIIIB/Part VIIC] of the *Family Law Act 1975* with [name], who is a member of the plan.

2. I require the information to:

- \* (a) assist me to properly negotiate a superannuation agreement.
- \* (b) assist me in connection with the operation of [Part VIIIB/Part VIIC] of the *Family Law Act 1975*.

DATED:

[signature of person making declaration]

\* Omit if not applicable

# EXPOSURE DRAFT

Value of non-member spouse's entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase **Schedule 2**  
Preliminary **Part 1**

Clause 1

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## Schedule 2—Value of non-member spouse's entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase

(section 29)

### Part 1—Preliminary

#### 1 Application of this Schedule

This Schedule sets out the method for working out the value at a particular time of a non-member spouse's entitlement for a percentage-only interest in a superannuation fund or an approved deposit fund in the payment phase.

#### 2 Definitions

In this Schedule:

**accrued benefit multiple at payment** means the member spouse's accrued benefit multiple, as defined in the governing rules of the eligible superannuation plan in which the superannuation interest is held, at the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose.

**accrued benefit multiple at separation** means the member spouse's accrued benefit multiple, as defined in the governing rules of the eligible superannuation plan in which the superannuation interest is held, at the date when the member spouse and non-member spouse separated or, if there have been 2 or more separations, at the date of the most recent separation.

**F** means the amount of any fees payable by the non-member spouse under section 95.

**m** means the number of completed months of the member spouse's age that are not included in the completed years at the date mentioned in the definition of the factor **R<sub>y</sub>**.

**OB** means the amount of the other benefit payable to the member spouse in relation to the interest multiplied by the relevant discount valuation factor that applies under clause 4 of Schedule 8.

**P<sub>y+m</sub>** means the pension valuation factor under Schedule 5 or 6 that applies to the particular pension payable to the member spouse at the member spouse's age at the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose.

**r** means:

# EXPOSURE DRAFT

**Schedule 2** Value of non-member spouse's entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase

**Part 1** Preliminary

## Clause 2

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- (a) if there is a surviving spouse of the member spouse—the reversionary percentage that would be payable to the surviving spouse if the member spouse had died on the day when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose; or
- (b) in any other case—zero.

**$R_y$**  means the reversion valuation factor mentioned in clause 5 of this Schedule that applies to the pension and the member spouse's age in completed years at the date when the new interest is created, or the amount is transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose.

**$R_{y+1}$**  means the reversion valuation factor mentioned in clause 5 of this Schedule that applies to the pension and the member spouse's age at the completion of the next year after the year mentioned in the definition of the factor  **$R_y$** .

**$X$**  means the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order.

**$YP$**  means the amount of pension payable each year to the member spouse.

# EXPOSURE DRAFT

Value of non-member spouse's entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase **Schedule 2**  
Method for subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Act **Part 2**

Clause 3

## Part 2—Method for subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Act

### 3 Method for subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Act

- (1) If no benefit other than a pension is payable to the member spouse in relation to the interest, the value at a particular time of the non-member spouse's entitlement in relation to the interest is:

$$\left\{ \left( \frac{\text{Accrued benefit multiple at separation}}{\text{Accrued benefit multiple at payment}} \right) \times X \times \left[ YP \times \left( P_{y+m} + r \times R_{y+m} \right) \right] \right\} - F$$

- (2) If another benefit, in addition to a pension, is payable to the member spouse in relation to the interest, the value at a particular time of the non-member spouse's entitlement in relation to the interest is:

$$\left\{ \left( \frac{\text{Accrued benefit multiple at separation}}{\text{Accrued benefit multiple at payment}} \right) \times X \times \left[ YP \times \left( P_{y+m} + r \times R_{y+m} \right) + OB \right] \right\} - F$$

- (3) For the purposes of subclauses (1) and (2), the reversion valuation factor ( $R_{y+m}$ ) at the particular time is:

$$\frac{\left[ R_y \times (12 - m) \right] + \left( R_{y+1} \times m \right)}{12}$$

- (4) In applying the factor  $P_{y+m}$  in the formula in subclauses (1) and (2), a reference in Schedule 5 or 6 to 'the relevant date' is to be read as if it were a reference to 'the date when the new interest was created, or the amount was transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose'.
- (5) In applying the factor  $OB$  in the formula in subclause (2):
- (a) a reference in clause 4 of Schedule 8 to 'the lump sum' or 'a lump sum' is to be read as if it were a reference to 'the other benefit payable to the member spouse in relation to the superannuation interest'; and

# EXPOSURE DRAFT

**Schedule 2** Value of non-member spouse's entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase

**Part 2** Method for subparagraphs 90XJ(1)(b)(i) and 90YN(1)(b)(i), and paragraphs 90XT(1)(c) and 90YY(1)(c), of the Act

## Clause 3

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- (b) the minimum deferral period, in relation to the other benefit payable to the member spouse in relation to the superannuation interest, is the minimum period of time until the other benefit is payable.

# EXPOSURE DRAFT

Value of non-member spouse's entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase **Schedule 2**  
Method for subparagraphs 90XJ(1)(b)(ii) and 90YN(1)(b)(ii), and paragraphs 90XT(1)(b) and 90YY(1)(b), of the Act **Part 3**

Clause 4

## Part 3—Method for subparagraphs 90XJ(1)(b)(ii) and 90YN(1)(b)(ii), and paragraphs 90XT(1)(b) and 90YY(1)(b), of the Act

### 4 Method for subparagraphs 90XJ(1)(b)(ii) and 90YN(1)(b)(ii), and paragraphs 90XT(1)(b) and 90YY(1)(b), of the Act

- (1) If no benefit other than a pension is payable to the member spouse in relation to the interest, the value at a particular time of the non-member spouse's entitlement in relation to the interest is:

$$X \times \left[ YP \times \left( P_{y+m} + r \times R_{y+m} \right) \right] - F$$

- (2) If another benefit, in addition to a pension, is payable to the member spouse in relation to the interest, the value at a particular time of the non-member spouse's entitlement in relation to the interest is:

$$X \times \left[ YP \times \left( P_{y+m} + r \times R_{y+m} \right) + OB \right] - F$$

- (3) For the purposes of subclauses (1) and (2), the reversion valuation factor ( $R_{y+m}$ ) at the particular time is:

$$\frac{\left[ R_y \times \left( 12 - m \right) \right] + \left( R_{y+1} \times m \right)}{12}$$

- (4) In applying the factor  $P_{y+m}$  in the formula in subclauses (1) and (2), a reference in Schedule 5 or 6 to 'the relevant date' is to be read as if it were a reference to 'the date when the new interest was created, or the amount was transferred or rolled over or paid to the non-member spouse, or a separate entitlement for the non-member spouse arose'.
- (5) In applying the factor  $OB$  in the formula in subclause (2):
- a reference in clause 4 of Schedule 8 to 'the lump sum' or 'a lump sum' is to be read as if it were a reference to 'the other benefit payable to the member spouse in relation to the superannuation interest'; and
  - the minimum deferral period, in relation to the other benefit payable to the member spouse in relation to the superannuation interest, is the minimum period of time until the other benefit is payable.

# EXPOSURE DRAFT

**Schedule 2** Value of non-member spouse's entitlement for percentage-only interest in superannuation fund or approved deposit fund in payment phase

**Part 4** Reversion valuation factors

Clause 5

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## Part 4—Reversion valuation factors

### 5 Reversion valuation factors

- (1) The table in this clause sets out the reversion valuation factors.
- (2) The factors in columns 2 and 3 apply if the pension is indexed in accordance with *[indexation rate TBC]*.
- (3) The factors in columns 4 and 5 apply if the pension is indexed in accordance with *[indexation rate TBC]*.

| Age at particular time<br>(in completed years)                 | Reversion valuation factors          |         |                                      |         |
|--|--------------------------------------|---------|--------------------------------------|---------|
|  | <i>[pension indexation rate TBC]</i> |         | <i>[pension indexation rate TBC]</i> |         |
|  | Males                                | Females | Males                                | Females |
| <i>[Factors removed from table for consultation purposes.]</i> |                                      |         |                                      |         |



# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Preliminary **Part 1**

Clause 1

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## Schedule 3—Method for determining gross value of defined benefit interest

(section 53)

### Part 1—Preliminary

#### 1 Application of this Schedule

This Schedule sets out the method for determining the gross value, at the relevant date, of a defined benefit interest that is in the growth phase at that date.

#### 2 Method

- (1) If the superannuation interest is held as a result of employment in which the member spouse is still engaged at the relevant date, the method is:
  - (a) if the benefit in respect of the interest is payable only as a lump sum—the method set out in Part 2 of this Schedule; and
  - (b) if the benefit in respect of the interest is payable only as a pension:
    - (i) in the case where the member spouse’s age is 65 years or less—the method set out in Part 3 of this Schedule; or
    - (ii) in the case where the member spouse’s age is more than 65 years—the method set out in Part 4 of this Schedule; and
  - (c) if the benefit in respect of the interest is payable as a lump sum, a pension, or a combination of a lump sum and a pension—the method set out in Part 5 of this Schedule.
- (2) If the superannuation interest is held as a result of employment in which the member spouse is no longer engaged at the relevant date and, under the governing rules of the plan in which the interest is held, the benefit in respect of the interest is payable on or after the relevant date, the method is:
  - (a) if the benefit in respect of the interest is payable only as a lump sum—the method set out in Part 6 of this Schedule; and
  - (b) if the benefit in respect of the interest is payable only as a pension—the method set out in Part 7 of this Schedule; and
  - (c) if the benefit in respect of the interest is payable as a lump sum, a pension, or a combination of a lump sum and a pension—the method set out in Part 8 of this Schedule.
- (3) For the purposes of subclause (1) and (2), a member spouse is taken to be engaged in employment at the relevant date if, at that date, the member spouse is on paid or unpaid leave from, or for any reason suspended in relation to, that employment.

# EXPOSURE DRAFT

Schedule 3 Method for determining gross value of defined benefit interest

Part 2 Interest relating to current employment—benefit payable only as lump sum

Clause 3

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## Part 2—Interest relating to current employment—benefit payable only as lump sum

### 3 Method

- (1) The method is:

$$A \times f_{y+m}$$

where:

*A* means the value of the lump sum benefit that has accrued in respect of the interest at the relevant date, being the product of the member spouse's accrued benefit multiple for a lump sum, as provided by the trustee under section 90XZB or 90YZR of the Act, and the salary figure on which benefits in respect of the interest, at that date, would be based, assuming that the member spouse were eligible to retire at that date.

*f<sub>y+m</sub>* means the lump sum valuation factor calculated in accordance with subclause (2).

- (2) For the purposes of subclause (1), the lump sum valuation factor (*f<sub>y+m</sub>*) at the relevant date is calculated as follows:

$$\frac{\left( f_y \times (12 - m) \right) + \left( f_{y+1} \times m \right)}{12}$$

where:

*f<sub>y</sub>* means:

- (a) if the normal retirement age is 60 years for the applicable eligible superannuation plan—the lump sum valuation factor mentioned in subclause 4(1) that applies at the relevant date to the term remaining in complete years until the member spouse reaches the member's retirement age; or
- (b) if the normal retirement age is 65 years for the applicable eligible superannuation plan—the lump sum valuation factor mentioned in subclause 4(2) that applies at the relevant date to the term remaining in complete years until the member spouse reaches the member's retirement age.

*m* means the number of complete months of the remaining term that are not included in the remaining complete years at the relevant date.

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as lump sum **Part 2**

Clause 4

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$f_{y+1}$  means the lump sum valuation factor mentioned in that subclause (see the definition of  $f_y$ ) that would apply if the member spouse's term to retirement in complete years were one year more than the member spouse's term to retirement in complete years at the relevant date.

## 4 Lump sum valuation factors

- (1) This subclause sets out the lump sum valuation factors for eligible superannuation plans with a normal retirement age of 60 years.

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### Lump sum valuation factors for plans with a normal retirement age of 60 years

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| Term to retirement (in complete years) | Lump sum valuation factors |
|--|----------------------------|
|--|----------------------------|

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*[Factors removed from table for public consultation purposes.]*

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- (2) This subclause sets out the lump sum valuation factors for eligible superannuation plans with a normal retirement age of 65 years.

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### Lump sum valuation factors for plans with a normal retirement age of 65 years

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| Term to retirement (in complete years) | Lump sum valuation factors |
|--|----------------------------|
|--|----------------------------|

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*[Factors removed from table for public consultation purposes.]*

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# EXPOSURE DRAFT

**Schedule 3** Method for determining gross value of defined benefit interest

**Part 3** Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

Clause 5

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## **Part 3—Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less**

### **5 Method**

- (1) The method is:

$$VN \times f_{y+m}$$

where:

*VN* means the lump sum value of the accrued pension benefit in respect of the interest at the member's retirement age, calculated in accordance with subclause (2).

*f<sub>y+m</sub>* means the lump sum valuation factor calculated in accordance with subclause 3(2) of this Schedule.

- (2) For the purposes of subclause (1), the lump sum value of the accrued pension benefit in respect of the interest at the member's retirement age (*VN*) is calculated as follows:

$$B \times \left( P_{ra} + \left( R_{sa} \times r \right) \right)$$

where:

*B* means the value of the pension benefit that had accrued in respect of the interest at the relevant date, being the product of the member's accrued benefit multiple for a pension, as provided by the trustee under section 90XZB or 90YZR of the Act, and the salary figure on which benefits in respect of the interest, at that date, would be based, assuming that the member were eligible to retire at that date.

*P<sub>ra</sub>* means the pension valuation factor mentioned in the relevant clause of this Part that applies to the pension and the member's retirement age.

*R<sub>sa</sub>* means the reversion valuation factor mentioned in the relevant clause of this Part that applies to the pension and the member's age in completed years at the relevant date.

*r* means the proportion of payments in respect of the interest that a non-member spouse would receive as the reversionary beneficiary of the member, on the death of the member, as provided by the trustee under section 90XZB or 90YZR of the Act.

### **6 Valuation factors—no guarantee period—[pension indexation rate TBC]**

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
-

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as pension, and member spouse’s age is  
65 years or less **Part 3**

Clause 7

(b) is *[indexation rate TBC]*.

| Member’s retirement age | Pension valuation factors                                 |        |
|-------------------------|---|--------|
|                         | No guarantee period— <i>[pension indexation rate TBC]</i> |        |
|                         | Male  | Female |

*[Factors removed from table for public consultation purposes.]*

| Member’s age at relevant date<br>(in completed years) | Reversion valuation factors                               |        |
|---|---|--------|
|   | No guarantee period— <i>[pension indexation rate TBC]</i> |        |
|   | Male  | Female |

*[Factors removed from table for public consultation purposes.]*

## 7 Valuation factors—no guarantee period—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is *[indexation rate TBC]*.

| Member’s retirement age | Pension valuation factors                                 |        |
|-------------------------|---|--------|
|                         | No guarantee period— <i>[pension indexation rate TBC]</i> |        |
|                         | Male  | Female |

*[Factors removed from table for public consultation purposes.]*

| Member’s age at relevant date<br>(in completed years) | Reversion valuation factors                               |        |
|---|---|--------|
|   | No guarantee period— <i>[pension indexation rate TBC]</i> |        |
|   | Male  | Female |

*[Factors removed from table for public consultation purposes.]*

## 8 Valuation factors—no guarantee period—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is *[indexation rate TBC]*.

# EXPOSURE DRAFT

Schedule 3 Method for determining gross value of defined benefit interest

Part 3 Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

## Clause 9

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|                                |  |               |
|--------------------------------|--|---------------|
| <b>Member's retirement age</b> | <b>Pension valuation factors</b>                         |               |
|                                | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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|   |  |               |
|---|--|---------------|
| <b>Member's age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                       |               |
|   | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|   | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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### 9 Valuation factors—no guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is *[indexation rate TBC]*.

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|                                |  |               |
|--------------------------------|--|---------------|
| <b>Member's retirement age</b> | <b>Pension valuation factors</b>                         |               |
|                                | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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|   |  |               |
|---|--|---------------|
| <b>Member's age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                       |               |
|   | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|   | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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### 10 Valuation factors—no guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is *[indexation rate TBC]*.

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|                                |  |               |
|--------------------------------|--|---------------|
| <b>Member's retirement age</b> | <b>Pension valuation factors</b>                         |               |
|                                | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>  | <b>Female</b> |

---

*[Factors removed from table for public consultation purposes.]*

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# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as pension, and member spouse’s age is  
65 years or less **Part 3**

Clause 11

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|  |  |               |
|--|--|---------------|
| <b>Member’s age at relevant date</b><br>(in completed years) | <b>Reversion valuation factors</b>                       |               |
|  | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|  | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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## 11 Valuation factors—no guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is *[indexation rate TBC]*.

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|                                |  |               |
|--------------------------------|--|---------------|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                         |               |
|                                | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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|  |  |               |
|--|--|---------------|
| <b>Member’s age at relevant date</b><br>(in completed years) | <b>Reversion valuation factors</b>                       |               |
|  | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|  | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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## 12 Valuation factors—no guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is *[indexation rate TBC]*.

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|                                |  |               |
|--------------------------------|--|---------------|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                         |               |
|                                | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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|  |  |               |
|--|--|---------------|
| <b>Member’s age at relevant date</b><br>(in completed years) | <b>Reversion valuation factors</b>                       |               |
|  | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|  | <b>Male</b>  | <b>Female</b> |

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*[Factors removed from table for public consultation purposes.]*

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# EXPOSURE DRAFT

**Schedule 3** Method for determining gross value of defined benefit interest

**Part 3** Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

## Clause 13

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|  |  |               |
|--|--|---------------|
| <b>Member's age at relevant date</b><br>(in completed years) | <b>Reversion valuation factors</b>                       |               |
|  | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|  | <b>Male</b>  | <b>Female</b> |

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### 13 Valuation factors—no guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is [indexation rate TBC].

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|                                |  |               |
|--------------------------------|--|---------------|
| <b>Member's retirement age</b> | <b>Pension valuation factors</b>                         |               |
|                                | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>  | <b>Female</b> |

*[Factors removed from table for public consultation purposes.]*

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|  |  |               |
|--|--|---------------|
| <b>Member's age at relevant date</b><br>(in completed years) | <b>Reversion valuation factors</b>                       |               |
|  | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|  | <b>Male</b>  | <b>Female</b> |

*[Factors removed from table for public consultation purposes.]*

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### 14 Valuation factors—no guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has no guarantee period; and
- (b) is [indexation rate TBC].

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|                                |  |               |
|--------------------------------|--|---------------|
| <b>Member's retirement age</b> | <b>Pension valuation factors</b>                         |               |
|                                | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>  | <b>Female</b> |

*[Factors removed from table for public consultation purposes.]*

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|  |  |               |
|--|--|---------------|
| <b>Member's age at relevant date</b><br>(in completed years) | <b>Reversion valuation factors</b>                       |               |
|  | <b>No guarantee period—[pension indexation rate TBC]</b> |               |
|  | <b>Male</b>  | <b>Female</b> |

*[Factors removed from table for public consultation purposes.]*

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# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as pension, and member spouse’s age is  
65 years or less **Part 3**

Clause 15

## 15 Valuation factors—5-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is [indexation rate TBC].

| Member’s retirement age  | Pension valuation factors                             |        |
|--|---|--------|
|  | 5-year guarantee period—[pension indexation rate TBC] |        |
|  | Male  | Female |
| [Factors removed from table for public consultation purposes.] |   |        |

| Member’s age at relevant date<br>(in completed years)          | Reversion valuation factors                           |        |
|--|---|--------|
|  | 5-year guarantee period—[pension indexation rate TBC] |        |
|  | Male  | Female |
| [Factors removed from table for public consultation purposes.] |   |        |

## 16 Valuation factors—5-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is [indexation rate TBC].

| Member’s retirement age  | Pension valuation factors                             |        |
|--|---|--------|
|  | 5-year guarantee period—[pension indexation rate TBC] |        |
|  | Male  | Female |
| [Factors removed from table for public consultation purposes.] |   |        |

| Member’s age at relevant date<br>(in completed years)          | Reversion valuation factors                           |        |
|--|---|--------|
|  | 5-year guarantee period—[pension indexation rate TBC] |        |
|  | Male  | Female |
| [Factors removed from table for public consultation purposes.] |   |        |

## 17 Valuation factors—5-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is [indexation rate TBC].

# EXPOSURE DRAFT

**Schedule 3** Method for determining gross value of defined benefit interest

**Part 3** Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

## Clause 18

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| Member's retirement age   | Pension valuation factors                                     |        |
|---|---|--------|
|   | Male  | Female |
|   | 5-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |        |

| Member's age at relevant date<br>(in completed years)                 | Reversion valuation factors                                   |        |
|---|---|--------|
|   | Male  | Female |
|   | 5-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |        |

### 18 Valuation factors—5-year guarantee period—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is *[indexation rate TBC]*.

| Member's retirement age   | Pension valuation factors                                     |        |
|---|---|--------|
|   | Male  | Female |
|   | 5-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |        |

| Member's age at relevant date<br>(in completed years)                 | Reversion valuation factors                                   |        |
|---|---|--------|
|   | Male  | Female |
|   | 5-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |        |

### 19 Valuation factors—5-year guarantee period—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is *[indexation rate TBC]*.

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as pension, and member spouse’s age is  
65 years or less **Part 3**

Clause 20

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|                                |  |
|--------------------------------|--|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                             |
|                                | <b>5-year guarantee period—[pension indexation rate TBC]</b> |
|                                | <b>Male</b> <b>Female</b>                                    |

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*[Factors removed from table for public consultation purposes.]*

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|   |  |
|---|--|
| <b>Member’s age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                           |
|   | <b>5-year guarantee period—[pension indexation rate TBC]</b> |
|   | <b>Male</b> <b>Female</b>                                    |

---

*[Factors removed from table for public consultation purposes.]*

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## 20 Valuation factors—5-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

|                                |  |
|--------------------------------|--|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                             |
|                                | <b>5-year guarantee period—[pension indexation rate TBC]</b> |
|                                | <b>Male</b> <b>Female</b>                                    |

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*[Factors removed from table for public consultation purposes.]*

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|   |  |
|---|--|
| <b>Member’s age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                           |
|   | <b>5-year guarantee period—[pension indexation rate TBC]</b> |
|   | <b>Male</b> <b>Female</b>                                    |

---

*[Factors removed from table for public consultation purposes.]*

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## 21 Valuation factors—5-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

|                                |  |
|--------------------------------|--|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                             |
|                                | <b>5-year guarantee period—[pension indexation rate TBC]</b> |
|                                | <b>Male</b> <b>Female</b>                                    |

---

*[Factors removed from table for public consultation purposes.]*

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# EXPOSURE DRAFT

**Schedule 3** Method for determining gross value of defined benefit interest

**Part 3** Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

Clause 22

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| Member's age at relevant date<br>(in completed years)                 | Reversion valuation factors                                  |        |
|---|--|--------|
|   | <u>5-year guarantee period—[pension indexation rate TBC]</u> |        |
|   | Male   | Female |
| <i>[Factors removed from table for public consultation purposes.]</i> |  |        |

---

## 22 Valuation factors—5-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

| Member's retirement age   | Pension valuation factors                                    |        |
|---|--|--------|
|   | <u>5-year guarantee period—[pension indexation rate TBC]</u> |        |
|   | Male   | Female |
| <i>[Factors removed from table for public consultation purposes.]</i> |  |        |

---

---

| Member's age at relevant date<br>(in completed years)                 | Reversion valuation factors                                  |        |
|---|--|--------|
|   | <u>5-year guarantee period—[pension indexation rate TBC]</u> |        |
|   | Male   | Female |
| <i>[Factors removed from table for public consultation purposes.]</i> |  |        |

---

## 23 Valuation factors—5-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 5-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

| Member's retirement age   | Pension valuation factors                                    |        |
|---|--|--------|
|   | <u>5-year guarantee period—[pension indexation rate TBC]</u> |        |
|   | Male   | Female |
| <i>[Factors removed from table for public consultation purposes.]</i> |  |        |

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| Member's age at relevant date<br>(in completed years)                 | Reversion valuation factors                                  |        |
|---|--|--------|
|   | <u>5-year guarantee period—[pension indexation rate TBC]</u> |        |
|   | Male   | Female |
| <i>[Factors removed from table for public consultation purposes.]</i> |  |        |

---

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as pension, and member spouse’s age is  
65 years or less **Part 3**

Clause 24

## 24 Valuation factors—10-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is [indexation rate TBC].

---

| Member’s retirement age  | Pension valuation factors                              |        |
|--|--|--------|
|  | 10-year guarantee period—[pension indexation rate TBC] |        |
|  | Male   | Female |
| [Factors removed from table for public consultation purposes.] |  |        |

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---

| Member’s age at relevant date<br>(in completed years)          | Reversion valuation factors                            |        |
|--|--|--------|
|  | 10-year guarantee period—[pension indexation rate TBC] |        |
|  | Male   | Female |
| [Factors removed from table for public consultation purposes.] |  |        |

---

## 25 Valuation factors—10-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is [indexation rate TBC].

---

| Member’s retirement age  | Pension valuation factors                              |        |
|--|--|--------|
|  | 10-year guarantee period—[pension indexation rate TBC] |        |
|  | Male   | Female |
| [Factors removed from table for public consultation purposes.] |  |        |

---

---

| Member’s age at relevant date<br>(in completed years)          | Reversion valuation factors                            |        |
|--|--|--------|
|  | 10-year guarantee period—[pension indexation rate TBC] |        |
|  | Male   | Female |
| [Factors removed from table for public consultation purposes.] |  |        |

---

## 26 Valuation factors—10-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is [indexation rate TBC].

# EXPOSURE DRAFT

Schedule 3 Method for determining gross value of defined benefit interest

Part 3 Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

Clause 27

---

|                                |   |               |
|--------------------------------|---|---------------|
| <b>Member's retirement age</b> | <b>Pension valuation factors</b>                              |               |
|                                | <b>10-year guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>   | <b>Female</b> |

---

*[Factors removed from table for public consultation purposes.]*

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|   |   |               |
|---|---|---------------|
| <b>Member's age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                            |               |
|   | <b>10-year guarantee period—[pension indexation rate TBC]</b> |               |
|   | <b>Male</b>   | <b>Female</b> |

---

*[Factors removed from table for public consultation purposes.]*

---

## 27 Valuation factors—10-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

|                                |   |               |
|--------------------------------|---|---------------|
| <b>Member's retirement age</b> | <b>Pension valuation factors</b>                              |               |
|                                | <b>10-year guarantee period—[pension indexation rate TBC]</b> |               |
|                                | <b>Male</b>   | <b>Female</b> |

---

*[Factors removed from table for public consultation purposes.]*

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|   |   |               |
|---|---|---------------|
| <b>Member's age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                            |               |
|   | <b>10-year guarantee period—[pension indexation rate TBC]</b> |               |
|   | <b>Male</b>   | <b>Female</b> |

---

*[Factors removed from table for public consultation purposes.]*

---

## 28 Valuation factors—10-year guarantee period—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is *[indexation rate TBC]*.

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as pension, and member spouse’s age is  
65 years or less **Part 3**

Clause 29

---

|                                |  |
|--------------------------------|--|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                                     |
|                                | <b>10-year guarantee period—<i>[pension indexation rate TBC]</i></b> |
|                                | <b>Male</b> <b>Female</b>  |

---

*[Factors removed from table for public consultation purposes.]*

---

---

|   |  |
|---|--|
| <b>Member’s age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                                   |
|   | <b>10-year guarantee period—<i>[pension indexation rate TBC]</i></b> |
|   | <b>Male</b> <b>Female</b>  |

---

*[Factors removed from table for public consultation purposes.]*

---

## **29 Valuation factors—10-year guarantee period—*[pension indexation rate TBC]***

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

|                                |  |
|--------------------------------|--|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                                     |
|                                | <b>10-year guarantee period—<i>[pension indexation rate TBC]</i></b> |
|                                | <b>Male</b> <b>Female</b>  |

---

*[Factors removed from table for public consultation purposes.]*

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|   |  |
|---|--|
| <b>Member’s age at relevant date<br/>(in completed years)</b> | <b>Reversion valuation factors</b>                                   |
|   | <b>10-year guarantee period—<i>[pension indexation rate TBC]</i></b> |
|   | <b>Male</b> <b>Female</b>  |

---

*[Factors removed from table for public consultation purposes.]*

---

## **30 Valuation factors—10-year guarantee period—*[pension indexation rate TBC]***

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

|                                |  |
|--------------------------------|--|
| <b>Member’s retirement age</b> | <b>Pension valuation factors</b>                                     |
|                                | <b>10-year guarantee period—<i>[pension indexation rate TBC]</i></b> |
|                                | <b>Male</b> <b>Female</b>  |

---

*[Factors removed from table for public consultation purposes.]*

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# EXPOSURE DRAFT

Schedule 3 Method for determining gross value of defined benefit interest

Part 3 Interest relating to current employment—benefit payable only as pension, and member spouse's age is 65 years or less

Clause 31

---

| Member's age at relevant date<br>(in completed years) | Reversion valuation factors                                    |        |
|---|--|--------|
|   | 10-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
|   | Male   | Female |

---

*[Factors removed from table for public consultation purposes.]*

## 31 Valuation factors—10-year guarantee period—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

| Member's retirement age | Pension valuation factors                                      |        |
|-------------------------|--|--------|
|                         | 10-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
|                         | Male   | Female |

---

*[Factors removed from table for public consultation purposes.]*

---

| Member's age at relevant date<br>(in completed years) | Reversion valuation factors                                    |        |
|---|--|--------|
|   | 10-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
|   | Male   | Female |

---

*[Factors removed from table for public consultation purposes.]*

## 32 Valuation factors—10-year guarantee period—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension:

- (a) has a 10-year guarantee period; and
- (b) is *[indexation rate TBC]*.

---

| Member's retirement age | Pension valuation factors                                      |        |
|-------------------------|--|--------|
|                         | 10-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
|                         | Male   | Female |

---

*[Factors removed from table for public consultation purposes.]*

---

| Member's age at relevant date<br>(in completed years) | Reversion valuation factors                                    |        |
|---|--|--------|
|   | 10-year guarantee period— <i>[pension indexation rate TBC]</i> |        |
|   | Male   | Female |

---

*[Factors removed from table for public consultation purposes.]*



# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable only as pension, and member spouse’s age is  
more than 65 years **Part 4**

Clause 33

---

## **Part 4—Interest relating to current employment—benefit payable only as pension, and member spouse’s age is more than 65 years**

### **33 Method—pension has no guarantee period**

If the pension has no guarantee period, Part 2 of Schedule 5 applies to the pension as if:

- (a) the member spouse has retired; and
- (b) the relevant date were the first day of the member spouse’s retirement.

### **34 Method—pension has a guarantee period**

If the pension has a guarantee period, Part 3 of Schedule 5 applies to the pension as if:

- (a) the member spouse has retired; and
- (b) the relevant date were the first day of the member spouse’s retirement.

# EXPOSURE DRAFT

**Schedule 3** Method for determining gross value of defined benefit interest

**Part 5** Interest relating to current employment—benefit payable as combination of lump sum and pension

Clause 35

---

## Part 5—Interest relating to current employment—benefit payable as combination of lump sum and pension

### 35 Method—no restriction on combination of lump sum and pension that may be taken

- (1) This clause applies if there is no provision in the eligible superannuation plan in which the interest is held restricting the proportion of the interest that may be taken as a lump sum or as a pension.

Note: The method is based on the assumption that  $[TBC]\%$  of the interest will be taken as a lump sum and  $[TBC]\%$  of the interest will be taken as a pension.

- (2) The method is:

$$\left( [TBC]\% \times PV_{ls} \right) + \left( [TBC]\% \times PV_p \right)$$

where:

$PV_{ls}$  means the present value of the lump sum that would apply if the whole benefit were to be taken as a lump sum, calculated using the method set out in Part 2 of this Schedule.

$PV_p$  means the present value of the pension that would apply if the whole benefit were to be taken as a pension, calculated using the method:

- (a) set out in Part 3 of this Schedule; or  
(b) that applies because of Part 4 of this Schedule.

Note: If Part 4 applies, then a method in Part 2 or 3 of Schedule 5 applies.

### 36 Method—restriction on proportion of pension that may be commuted to lump sum

- (1) This clause applies if:
- (a) the benefit in respect of the interest is payable as a pension; and  
(b) the governing rules of the eligible superannuation plan in which the interest is held restrict the proportion of the pension that may be commuted to a lump sum.

- (2) The method is:

$$\left( \text{Max}_{ls}\% \times PV_{ls} \right) + \left( \left( 1 - \text{Max}_{ls}\% \right) \times PV_p \right)$$

where:

$\text{Max}_{ls}\%$  means:

- (a) the maximum possible amount of pension that may be commuted to a lump sum, expressed as a percentage of the amount of the pension that would be payable if the whole benefit were to be taken as a pension; or

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to current employment—benefit payable as combination of lump sum and pension  
**Part 5**

Clause 37

- (b) if the percentage calculated under paragraph (a) is greater than  $[TBC]\%$ —  
 $[TBC]\%$ .

$PV_{ls}$  means the present value of the lump sum that would apply if the whole benefit could, and were to, be taken as a lump sum, calculated using the method set out in Part 2 of this Schedule.

$PV_p$  means the present value of the pension that would apply if the whole benefit were to be taken as a pension, calculated using the method:

- (a) set out in Part 3 of this Schedule; or  
(b) that applies because of Part 4 of this Schedule.

Note: If Part 4 applies, then a method in Part 2 or 3 of Schedule 5 applies.

## 37 Method—restriction on lump sum amount that may be converted to pension

- (1) This clause applies if:
- (a) the benefit in respect of the interest is payable as a lump sum; and
  - (b) the governing rules of the eligible superannuation plan in which the interest is held restrict the amount of the lump sum that may be converted to a pension.
- (2) The method is:

$$\left( (1 - \text{Max}_{p\%}) \times PV_{ls} \right) + \left( \text{Max}_{p\%} \times PV_p \right)$$

where:

$\text{Max}_{p\%}$  means:

- (a) the maximum possible amount of lump sum that may be converted to a pension, expressed as a percentage of the amount of the lump sum that would be payable if the whole benefit were to be taken as a lump sum; or  
(b) if the percentage calculated under paragraph (a) is greater than  $[TBC]\%$ —  
 $[TBC]\%$ .

$PV_{ls}$  means the present value of the lump sum that would apply if the whole benefit were to be taken as a lump sum, calculated using the method set out in Part 2 of this Schedule.

$PV_p$  means the present value of the pension that would apply if the whole benefit could, and were to, be taken as a pension, calculated using the method:

- (a) set out in Part 3 of this Schedule; or  
(b) that applies because of Part 4 of this Schedule.

Note: If Part 4 applies, then a method in Part 2 or 3 of Schedule 5 applies.

## 38 Conversion of accrued benefit multiple

- (1) For the purpose of calculating the value of  $PV_{ls}$  under subclause 35(2), 36(2) or 37(2) of this Schedule, if the accrued benefit multiple provided by the trustee under section 90XZB or 90YZR of the Act is expressed as a pension multiple,

# EXPOSURE DRAFT

**Schedule 3** Method for determining gross value of defined benefit interest

**Part 5** Interest relating to current employment—benefit payable as combination of lump sum and pension

## Clause 38

---

the multiple must be converted to a lump sum multiple using the commutation factor provided by the trustee under that section.

- (2) For the purpose of calculating the value of  $PV_p$  under subclause 35(2), 36(2) or 37(2) of this Schedule, if the accrued benefit multiple provided by the trustee under section 90XZB or 90YZR of the Act is expressed as a lump sum multiple, the multiple must be converted to a pension multiple using the conversion factor provided by the trustee under that section.

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to former employment—benefit payable only as lump sum **Part 6**

Clause 39

## Part 6—Interest relating to former employment—benefit payable only as lump sum

### 39 Method—lump sum comprising different components

- (1) This clause applies if the lump sum payable in respect of the interest comprises a number of components, the value of which will increase by different rates over the minimum deferral period.
- (2) The gross value of the interest is the sum of the gross value of each component comprising the lump sum, calculated as follows:

$$DB \times D_{y+m}$$

where:

**DB** means the nominal value of the component of the lump sum at the relevant date.

**$D_{y+m}$**  means the discount valuation factor calculated in accordance with subclause (3).

- (3) For the purposes of subclause (2),  $D_{y+m}$  at the relevant date is:

$$\frac{\left( D_y \times \left( 12 - m \right) \right) + \left( D_{y+1} \times m \right)}{12}$$

where:

**$D_y$**  means the discount valuation factor specified in clause 40 in respect of the lump sum at the relevant date on the basis of the minimum deferral period (in complete years) applying to the lump sum at that date.

**$m$**  means the number of complete months of the minimum deferral period applicable to the lump sum at the relevant date that are not included in the remaining complete years of that period at that date.

**$D_{y+1}$**  means the discount valuation factor specified in clause 40 that would apply in respect of the lump sum at the relevant date if the minimum deferral period (in complete years) applying to the lump sum at that date were one year more than the minimum deferral period applying to the lump sum at that date.

- (4) For the purpose of calculating the discount valuation factor under subclause (3):

**minimum deferral period**, in relation to the benefit payable to the member spouse in respect of the interest, means the period until the earliest date at which the benefit may be paid (other than for death or disability).

**nominal value**, of a component of a lump sum payable in respect of a superannuation interest at a particular date, means the amount of the component payable (excluding any superannuation contributions surcharge payable in

# EXPOSURE DRAFT

Schedule 3 Method for determining gross value of defined benefit interest

Part 6 Interest relating to former employment—benefit payable only as lump sum

## Clause 40

---

respect of the interest) if the member spouse were able to take, and did take, the benefit in respect of the interest at that date.

### 40 Discount valuation factors

- (1) For the purposes of subclause 39(3), this clause sets out the discount valuation factors.
- (2) Column 2 of the following table sets out the applicable factor for the annual amount of a lump sum that, at the relevant date, *[the lump sum indexation rate in respect of the minimum deferral period is TBC]*.
- (3) Column 3 of the following table sets out the applicable factor for the annual amount of a lump sum that, at the relevant date, *[the lump sum indexation rate in respect of the minimum deferral period is TBC]*.
- (4) Column 4 of the following table sets out the applicable factor for the annual amount of a lump sum that, at the relevant date, *[the lump sum indexation rate in respect of the minimum deferral period is TBC]*.
- (5) If the annual amount of the lump sum at the relevant date is indexed in respect of the minimum deferral period in accordance with a fund crediting rate, the factor is 1.

---

| Minimum deferral period for lump sum (in complete years) | Discount valuation factors            |                                       |                                       |
|--|---------------------------------------|---------------------------------------|---------------------------------------|
|  | Lump sum <i>[indexation rate TBC]</i> | Lump sum <i>[indexation rate TBC]</i> | Lump sum <i>[indexation rate TBC]</i> |

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*[Factors removed from table for public consultation purposes.]*

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### 41 Method—lump sum (other than lump sum comprising different components)

- (1) This clause applies if clause 39 of this Schedule does not apply.
- (2) The method is:

$$DB \times D_{y+m}$$

where:

**DB** means the nominal value of the lump sum at the relevant date.

**$D_{y+m}$**  means the discount valuation factor calculated in accordance with subclauses 39(2), (3) and (4).

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to former employment—benefit payable only as pension **Part 7**

Clause 42

## Part 7—Interest relating to former employment—benefit payable only as pension

### 42 Method—pension payable periodically

- (1) This clause applies if the amount of the pension that would be payable in respect of the interest is, at the time when payment of the pension commences, a fixed amount or an amount determined by increasing a fixed amount in accordance with an index over the minimum deferral period.
- (2) The method is:

$$DBP \times \left( P_{da} + \left( R_{sa} \times r \right) \right) \times D_{y+m}$$

where:

**DBP** means the annual amount of pension at the relevant date if the pension were to commence on completion of the minimum deferral period.

**P<sub>da</sub>** means the pension valuation factor mentioned in:

- (a) the clause of Part 3 of this Schedule; or
- (b) the clause of Schedule 5 that applies because of Part 4 of this Schedule; that applies to the pension, its indexation rate (if any), guarantee period (if any) and the member spouse's age at the end of the minimum deferral period.

Note: If Part 4 of this Schedule applies, then a clause in Part 2 or 3 of Schedule 5 applies.

**R<sub>sa</sub>** means the reversion valuation factor mentioned in:

- (a) the clause of Part 3 of this Schedule; or
- (b) the clause of Schedule 5 that applies because of Part 4 of this Schedule; that applies to the pension and the member spouse's age in completed years at the relevant date.

Note: If Part 4 of this Schedule applies, then a clause in Part 2 or 3 of Schedule 5 applies.

**r** means the proportion of pension that a non-member spouse would receive, as the reversionary beneficiary of the member spouse, on the death of the member spouse, as provided by the trustee under section 90XZB or 90YZR of the Act.

**D<sub>y+m</sub>** means the discount valuation factor calculated in accordance with subclause (3).

- (3) For the purposes of subclause (2), the discount valuation factor (**D<sub>y+m</sub>**) at the relevant date is:

$$\frac{\left( D_y \times \left( 12 - m \right) \right) + \left( D_{y+1} \times m \right)}{12}$$

where:

# EXPOSURE DRAFT

Schedule 3 Method for determining gross value of defined benefit interest

Part 7 Interest relating to former employment—benefit payable only as pension

## Clause 43

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$D_y$  means the discount valuation factor mentioned in clause 43 that applies to the pension at the relevant date and the minimum deferral period in complete years at that date.

$m$  means the number of complete months of the minimum deferral period applicable to the pension at the relevant date that are not included in the remaining complete years of that period at that date.

$D_{y+1}$  means the discount valuation factor specified in clause 43 that would apply in respect of the pension at the relevant date if the minimum deferral period (in complete years) applying to the pension at that date were one year more than the minimum deferral period applying to the pension at that date.

(4) In this clause and clause 43:

**minimum deferral period**, in relation to the benefit payable to the member spouse in respect of the interest, means the period until the earliest date at which the benefit may be paid (other than for death or disability).

### 43 Discount valuation factors

- (1) For the purposes of subclause 42(3), this clause sets out the discount valuation factors.
- (2) Column 2 of the following table sets out the applicable factor for the annual amount of a pension that, at the relevant date, *[the lump sum indexation rate in respect of the minimum deferral period is TBC]*.
- (3) Column 3 of the following table sets out the applicable factor for the annual amount of a pension that, at the relevant date, *[the lump sum indexation rate in respect of the minimum deferral period is TBC]*.
- (4) Column 4 of the following table sets out the applicable factor for the annual amount of a pension that, at the relevant date, *[the lump sum indexation rate in respect of the minimum deferral period is TBC]*.
- (5) If the annual amount of the pension at the relevant date is indexed in respect of the minimum deferral period in accordance with a fund crediting rate, the factor is 1.

---

| Minimum deferral period for pension (in complete years) | Discount valuation factors           |                                      |                                      |
|---|--------------------------------------|--------------------------------------|--------------------------------------|
|   | Pension <i>[indexation rate TBC]</i> | Pension <i>[indexation rate TBC]</i> | Pension <i>[indexation rate TBC]</i> |

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*[Factors removed from table for public consultation purposes.]*

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# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to former employment—benefit payable only as pension **Part 7**

Clause 44

## 44 Method—conversion of lump sum to pension

(1) This clause applies if the amount of the pension payable in respect of the interest is to be determined by reference to the conversion of a lump sum amount when payment of the pension commences.

(2) The method is:

$$\frac{DB}{C_{da}} \times \left( P_{da} + \left( R_{sa} \times r \right) \right) \times D_{y+m}$$

where:

**DB** means the nominal value of the lump sum at the relevant date.

**C<sub>da</sub>** means the factor that would be used to convert the lump sum to a pension at the end of the minimum deferral period.

**P<sub>da</sub>** means the pension valuation factor mentioned in:

- (a) the clause of Part 3 of this Schedule; or
- (b) the clause of Schedule 5 that applies because of Part 4 of this Schedule; that applies to the pension, its indexation rate (if any), guarantee period (if any) and the member spouse's age at the end of the minimum deferral period.

Note: If Part 4 of this Schedule applies, then a clause in Part 2 or 3 of Schedule 5 applies.

**R<sub>sa</sub>** means the reversion valuation factor mentioned in:

- (a) the clause of Part 3 of this Schedule; or
- (b) the clause of Schedule 5 that applies because of Part 4 of this Schedule; that applies to the pension and the member spouse's age in completed years at the relevant date.

Note: If Part 4 of this Schedule applies, then a clause in Part 2 or 3 of Schedule 5 applies.

**r** means the proportion of the pension that a non-member spouse would receive as the reversionary beneficiary of the member spouse on the death of the member spouse, as provided by the trustee under section 90XZB or 90YZR of the Act.

**D<sub>y+m</sub>** means the discount valuation factor calculated in accordance with subclause 39(3) of this Schedule.

(3) For the purpose of calculating the discount valuation factor under subclause (2):

**minimum deferral period** has the meaning given by subclause 39(4).

**nominal value** has the meaning given by subclause 39(4).

# EXPOSURE DRAFT

**Schedule 3** Method for determining gross value of defined benefit interest

**Part 8** Interest relating to former employment—benefit payable as combination of lump sum and pension

Clause 45

---

## **Part 8—Interest relating to former employment—benefit payable as combination of lump sum and pension**

### **45 Method—no restriction on combination of lump sum and pension that may be taken**

- (1) This clause applies if there is no provision in the governing rules of the eligible superannuation plan in which the interest is held restricting the proportion of the interest that may be taken as a lump sum or as a pension.
- (2) The method is:

$$\left( [TBC]\% \times PV_{ls} \right) + \left( [TBC]\% \times PV_p \right)$$

where:

*PV<sub>ls</sub>* means the present value of the lump sum that would apply if the whole benefit were to be taken as a lump sum, calculated using the method set out in Part 6 of this Schedule.

*PV<sub>p</sub>* means the present value of the pension that would apply if the whole benefit were to be taken as a pension, calculated using the method set out in Part 7 of this Schedule.

### **46 Method—restriction on proportion of pension that may be commuted to lump sum**

- (1) This clause applies if:
  - (a) the benefit in respect of the interest is payable as a pension; and
  - (b) the governing rules of the eligible superannuation plan in which the interest is held restrict the proportion of the pension that may be commuted to a lump sum.
- (2) The method is:

$$\left( \text{Max}_{ls}\% \times PV_{ls} \right) + \left( \left( 1 - \text{Max}_{ls}\% \right) \times PV_p \right)$$

where:

*Max<sub>ls</sub>*% means:

- (a) the maximum amount of pension that, at the end of the minimum deferral period, may be commuted to a lump sum expressed as a percentage of the amount of the pension that would be payable if the whole benefit were to be taken as a pension; or
- (b) if the percentage calculated under paragraph (a) is greater than *[TBC]*%—*[TBC]*%.

# EXPOSURE DRAFT

Method for determining gross value of defined benefit interest **Schedule 3**  
Interest relating to former employment—benefit payable as combination of lump sum and pension  
**Part 8**

Clause 47

$PV_{ls}$  means the present value of the lump sum that would apply if the whole benefit were to be taken as a lump sum, calculated using the method set out in Part 6 of this Schedule.

$PV_p$  means the present value of the pension that would apply if the whole benefit were to be taken as a pension, calculated using the method set out in Part 7 of this Schedule.

(3) In this clause:

*minimum deferral period* has the meaning given by subclause 39(4) of this Schedule.

## 47 Method—restriction on lump sum amount that may be taken as pension

(1) This clause applies if:

- (a) the benefit in respect of the interest is payable as a lump sum; and
- (b) the governing rules of the eligible superannuation plan in which the interest is held restrict the amount of the lump sum that may be taken as a pension.

(2) The method is:

$$\left( (1 - \text{Max}_{p\%}) \times PV_{ls} \right) + \left( \text{Max}_{p\%} + PV_p \right)$$

where:

$\text{Max}_{p\%}$  means:

- (a) the maximum possible amount of lump sum that, at the end of the minimum deferral period, may be converted to a pension expressed as a percentage of the lump sum that would be payable if the whole benefit were to be taken as a lump sum; or
- (b) if the percentage calculated under paragraph (a) is greater than  $[TBC]\%$ — $[TBC]\%$ .

$PV_{ls}$  means the present value of the lump sum that would apply if the whole benefit were to be taken as a lump sum, calculated using the method set out in Part 6 of this Schedule.

$PV_p$  means the present value of the pension that would apply if the whole benefit were to be taken as a pension, calculated using the method set out in Part 7 of this Schedule.

(3) In this clause:

*minimum deferral period* has the meaning given by subclause 39(4).

# EXPOSURE DRAFT

Schedule 4 Method for determining gross value of partially vested accumulation interest

Clause 1

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## Schedule 4—Method for determining gross value of partially vested accumulation interest

(section 56)

### 1 Application of this Schedule

This Schedule sets out the method for determining the gross value, at the relevant date, of a partially vested accumulation interest that is in the growth phase at that date.

### 2 Method

(1) The method is:

$$V + \left( (A - V) \times f_{y+m} \right)$$

where:

$V$  means the value, at the relevant date, of the actual vested benefit in respect of the interest, determined in accordance with clause 3.

$A$  means the amount that would be the total amount standing to the credit of the member spouse in respect of the interest if the benefit in respect of the interest were fully vested at the relevant date, determined in accordance with clause 4.

$f_{y+m}$  means the vesting factor at the relevant date calculated in accordance with subclause (2).

(2) For the purposes of subclause (1), the vesting factor ( $f_{y+m}$ ) at the relevant date is:

$$\frac{\left( f_y \times (12 - m) \right) + \left( f_{y+1} \times m \right)}{12}$$

where:

$f_y$  means the vesting factor mentioned in clause 5 of this Schedule that applies to the relevant vesting period and the length of the member spouse's membership in the plan in completed years at the relevant date.

$m$  means the number of completed months of the member spouse's membership in the plan at the relevant date that are not included in the completed years of membership at that date.

$f_{y+1}$  means the vesting factor mentioned in clause 5 of this Schedule that would apply to the relevant vesting period if the member spouse's length of membership in the plan were one year more than the member spouse's length of membership in complete years at the relevant date.

# EXPOSURE DRAFT

Method for determining gross value of partially vested accumulation interest **Schedule 4**

Clause 3

## 3 Actual vested benefit

- (1) For the purposes of subclause 2(1), this clause sets out how to determine the value, at the relevant date, of the actual vested benefit (*V*) in respect of the superannuation interest.
- (2) Subject to subclause (4), if:
  - (a) a member information statement for the member spouse stating the value of the interest at the relevant date has been provided to the member spouse; and
  - (b) evidence of the contents of the statement is before the court in the relevant proceeding;the value at the relevant date of the actual vested benefit in respect of the interest is the value of the interest stated in the statement.
- (3) If:
  - (a) a statement has been issued by the trustee of the plan in which the interest is held, being a statement that states the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest at the relevant date if the member spouse had voluntarily ceased to be a member of the plan on that date; and
  - (b) evidence of the contents of the statement is before the court in the relevant proceeding;the value at the relevant date of the actual vested benefit in respect of the interest is the value of the interest stated in the statement.
- (4) If:
  - (a) evidence of the contents of a member information statement mentioned in subclause (2) and a statement of the kind mentioned in subclause (3) is before the court in the relevant proceeding; and
  - (b) the value of the interest stated in each statement is not the same;the value at the relevant date of the actual vested benefit in respect of the interest is the value of the interest stated in the statement mentioned in subclause (3).
- (5) If subclause (2) or (3) does not apply, the value, at the relevant date, of the actual vested benefit in respect of the interest is:

$$V1 + \frac{(V2 - V1) \times X}{D}$$

where:

*VI* means the sum of:

- (a) the value of the actual vested benefit in respect of the interest at the first valuation date; and
- (b) the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan) in the period:
  - (i) starting on the day after the first valuation date; and

# EXPOSURE DRAFT

## Schedule 4 Method for determining gross value of partially vested accumulation interest

### Clause 3

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(ii) ending on the day before the relevant date;  
less the value of any partial payment of benefits to the member made in that period.

**V2** means the sum of:

- (a) the value of the actual vested benefit in respect of the interest at the second valuation date; and
- (b) the value of any partial payment of benefits made to the member in the period beginning on the day after the relevant date and ending at the end of the second valuation date, less the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan), and any interest earned on those benefits, in that period.

**X** means the number of days in the period between the first valuation date and the relevant date (excluding both those dates).

**D** means the number of days in the period beginning on the day after the first valuation date and ending at the end of the second valuation date.

- (6) For the purpose of determining the value, at the relevant date, of the actual vested benefit in respect of the member spouse's interest under subclause (5):
  - (a) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is after the valuation date stated in that statement:
    - (i) the **first valuation date** is the valuation date stated in that statement; and
    - (ii) the **value of the actual vested benefit in respect of the interest at the first valuation date** is the value of the interest stated in that statement; and
    - (iii) the **second valuation date** is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
    - (iv) the **value of the actual vested benefit in respect of the interest at the second valuation date** is the value of the interest at that date; and
  - (b) if, in relation to the interest, evidence of the contents of 2 member information statements is before the court in the relevant proceeding, and the relevant date is between the valuation date stated in one of those statements (the **first statement**) and the valuation date stated in the other statement (the **second statement**):
    - (i) the **first valuation date** is the valuation date stated in the first statement; and
    - (ii) the **value of the actual vested benefit in respect of the interest at the first valuation date** is the value of the interest stated in the first statement; and
    - (iii) the **second valuation date** is the valuation date stated in the second statement; and
    - (iv) the **value of the actual vested benefit in respect of the interest at the second valuation date** is the value of the interest stated in the second statement; and

# EXPOSURE DRAFT

Method for determining gross value of partially vested accumulation interest **Schedule 4**

Clause 3

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- (c) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is before the valuation date stated in that statement:
  - (i) the **first valuation date** is the date when the interest was acquired by the member spouse; and
  - (ii) the **value of the actual vested benefit in respect of the interest at the first valuation date** is the value of the interest at that date; and
  - (iii) the **second valuation date** is the valuation date stated in the statement; and
  - (iv) the **value of the actual vested benefit in respect of the interest at the second valuation date** is the value of the interest stated in the statement; and
- (d) in any other case:
  - (i) the **first valuation date** is the date when the interest was acquired by the member spouse; and
  - (ii) the **value of the actual vested benefit in respect of the interest at the first valuation date** is the value of the interest at that date; and
  - (iii) the **second valuation date** is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
  - (iv) the **value of the actual vested benefit in respect of the interest at the second valuation date** is the value of the interest at that date.
- (7) For the purposes of subparagraphs (6)(a)(iv) and (d)(iv), the value of the actual vested benefit in respect of the interest at the second valuation date includes:
  - (a) any amount payable under an earlier payment split that applies in respect of the interest; and
  - (b) the amount of any surcharge debt of the member spouse in respect of the interest.
- (8) For the purposes of this clause, a reference to the value of the interest stated in a statement:
  - (a) is a reference to the value stated in the statement, however that value is described (for example, the member's account balance, share in the plan, or withdrawal benefit); and
  - (b) if 2 or more values are stated in the statement, is taken to be a reference to the value of the benefits (before any taxes or other charges have been deducted) that would have been payable in respect of the interest if the member spouse had voluntarily ceased to be a member of the plan at the date at which the value is stated.
- (9) In this clause:

**valuation date**, in relation to a superannuation interest to which a member information statement for the member spouse, or similar statement, applies, means the date as at which the value of the interest is stated in the statement.

# EXPOSURE DRAFT

Schedule 4 Method for determining gross value of partially vested accumulation interest

Clause 4

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## 4 Total amount standing to credit of member spouse if benefit were fully vested at relevant date

- (1) For the purposes of subclause 2(1), this clause sets out how to determine the amount (**A**) that would be the total amount standing to the credit of the member spouse in respect of the superannuation interest if the benefit in respect of the interest were fully vested at the relevant date.
- (2) If evidence is before the court in the relevant proceeding of the contents of a member information statement for the member spouse that states the total member credit at the relevant date, the amount (**A**) is the total member credit stated in the statement.
- (3) If subclause (2) does not apply, the amount (**A**) is:

$$A1 + \frac{(A2 - A1) \times X}{D}$$

where:

**A1** means the sum of:

- (a) the total member credit at the first valuation date; and
- (b) the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan) in the period:
  - (i) starting on the day after the first valuation date; and
  - (ii) ending on the day before the relevant date;less the value of any partial payment of benefits to the member made in that period.

**A2** means the sum of:

- (a) the total member credit at the second valuation date; and
- (b) the value of any partial payment of benefits made to the member in the period beginning on the day after the relevant date and ending at the end of the second valuation date, less the value of any benefits rolled over, or transferred, by the member spouse to the plan in which the interest is held (other than regular contributions made by or for the member spouse to the plan), and any interest earned on those benefits, in that period.

**X** means the number of days in the period between the first valuation date and the relevant date (excluding both those dates).

**D** means the number of days in the period beginning on the day after the first valuation date and ending at the end of the second valuation date.

- (4) For the purpose of determining the amount (**A**) under subclause (3):
  - (a) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is after the valuation date stated in that statement:
    - (i) the **first valuation date** is the valuation date stated in that statement; and



# EXPOSURE DRAFT

Method for determining gross value of partially vested accumulation interest **Schedule 4**

Clause 4

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- (ii) the ***total member credit at the first valuation date*** is the total member credit stated in that statement; and
    - (iii) the ***second valuation date*** is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
    - (iv) the ***total member credit at the second valuation date*** is the total member credit at that date; and
  - (b) if, in relation to the interest, evidence of the contents of 2 member information statements is before the court in the relevant proceeding, and the relevant date is between the valuation date stated in one of those statements (the ***first statement***) and the valuation date stated in the other statement (the ***second statement***):
    - (i) the ***first valuation date*** is the valuation date stated in the first statement; and
    - (ii) the ***total member credit at the first valuation date*** is the total member credit stated in the first statement; and
    - (iii) the ***second valuation date*** is the valuation date stated in the second statement; and
    - (iv) the ***total member credit at the second valuation date*** is the total member credit stated in the second statement; and
  - (c) if, in relation to the interest, evidence of the contents of one member information statement only is before the court in the relevant proceeding, and the relevant date is before the valuation date stated in that statement:
    - (i) the ***first valuation date*** is the date when the interest was acquired by the member spouse; and
    - (ii) the ***total member credit at the first valuation date*** is the total member credit at that date; and
    - (iii) the ***second valuation date*** is the valuation date stated in the statement; and
    - (iv) the ***total member credit at the second valuation date*** is the total member credit stated in the statement; and
  - (d) in any other case:
    - (i) the ***first valuation date*** is the date when the interest was acquired by the member spouse; and
    - (ii) the ***total member credit at the first valuation date*** is the total member credit at that date; and
    - (iii) the ***second valuation date*** is a date after the relevant date that is within 28 days before the date when the valuation of the interest is being carried out; and
    - (iv) the ***total member credit at the second valuation date*** is the total member credit at that date.
- (5) For the purposes of subparagraphs (4)(a)(iv) and (d)(iv), the total member credit at the second valuation date includes:
- (a) any amount payable under an earlier payment split that applies in respect of the interest; and
  - (b) the amount of any surcharge debt of the member spouse in respect of the interest.

# EXPOSURE DRAFT

## Schedule 4 Method for determining gross value of partially vested accumulation interest

### Clause 5

(6) In this clause:

**total member credit**, in relation to a superannuation interest of a member spouse and a date, means the total amount that would be standing to the credit of the member spouse in respect of the interest if the benefit in respect of the interest were fully vested at that date.

**valuation date**, in relation to a superannuation interest to which a member information statement applies, means the date as at which the total member credit in respect of the interest is stated in the statement.

### 5 Vesting factors

This clause sets out the vesting factors.

| Length of membership<br>(in completed years) | Vesting factors<br>2, 3, 4, 5, 6 and 7 year vesting periods |                       |                       |                       |                       |                       |
|--|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
|  | 2 year vesting period                                       | 3 year vesting period | 4 year vesting period | 5 year vesting period | 6 year vesting period | 7 year vesting period |
| 0  | 0.82  | 0.77                  | 0.74                  | 0.71                  | 0.68                  | 0.66                  |
| 1  | 0.88  | 0.84                  | 0.80                  | 0.77                  | 0.74                  | 0.72                  |
| 2  | 1.00  | 0.90                  | 0.86                  | 0.83                  | 0.80                  | 0.77                  |
| 3  |   | 1.00                  | 0.91                  | 0.88                  | 0.85                  | 0.82                  |
| 4  |   |                       | 1.00                  | 0.93                  | 0.89                  | 0.86                  |
| 5  |   |                       |                       | 1.00                  | 0.93                  | 0.90                  |
| 6  |   |                       |                       |                       | 1.00                  | 0.93                  |
| 7  |   |                       |                       |                       |                       | 1.00                  |

| Length of membership<br>(in completed years) | Vesting factors<br>8, 9, 10, 15 and 20 year vesting periods |                       |                        |                        |                        |
|--|---|-----------------------|------------------------|------------------------|------------------------|
|  | 8 year vesting period                                       | 9 year vesting period | 10 year vesting period | 15 year vesting period | 20 year vesting period |
| 0  | 0.63  | 0.61                  | 0.60                   | 0.52                   | 0.47                   |
| 1  | 0.69  | 0.67                  | 0.65                   | 0.57                   | 0.52                   |
| 2  | 0.75  | 0.72                  | 0.70                   | 0.62                   | 0.56                   |
| 3  | 0.79  | 0.77                  | 0.75                   | 0.66                   | 0.60                   |
| 4  | 0.84  | 0.81                  | 0.79                   | 0.70                   | 0.63                   |
| 5  | 0.87  | 0.84                  | 0.82                   | 0.72                   | 0.66                   |
| 6  | 0.90  | 0.88                  | 0.85                   | 0.75                   | 0.69                   |
| 7  | 0.94  | 0.91                  | 0.88                   | 0.78                   | 0.71                   |
| 8  | 1.00  | 0.94                  | 0.91                   | 0.81                   | 0.74                   |
| 9  |   | 1.00                  | 0.94                   | 0.84                   | 0.77                   |
| 10   |   |                       | 1.00                   | 0.86                   | 0.79                   |

# EXPOSURE DRAFT

Method for determining gross value of partially vested accumulation interest **Schedule 4**

Clause 5

| Length of membership<br>(in completed years) | Vesting factors<br>8, 9, 10, 15 and 20 year vesting periods |                       |                        |                        |                        |
|--|---|-----------------------|------------------------|------------------------|------------------------|
|  | 8 year vesting period                                       | 9 year vesting period | 10 year vesting period | 15 year vesting period | 20 year vesting period |
| 11   |   |                       |                        | 0.89                   | 0.82                   |
| 12   |   |                       |                        | 0.91                   | 0.84                   |
| 13   |   |                       |                        | 0.94                   | 0.87                   |
| 14   |   |                       |                        | 0.96                   | 0.89                   |
| 15   |   |                       |                        | 1.00                   | 0.91                   |
| 16   |   |                       |                        |                        | 0.93                   |
| 17   |   |                       |                        |                        | 0.95                   |
| 18   |   |                       |                        |                        | 0.96                   |
| 19   |   |                       |                        |                        | 0.98                   |
| 20   |   |                       |                        |                        | 1.00                   |

# EXPOSURE DRAFT

**Schedule 5** Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)

**Part 1** Preliminary

Clause 1

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## **Schedule 5—Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)**

(paragraph 66(2)(c))

### **Part 1—Preliminary**

#### **1 Application of this Schedule**

This Schedule sets out the method for determining the gross value, at the relevant date, of a superannuation interest that is in the payment phase at the relevant date, if the benefits in respect of the interest are payable:

- (a) as a pension for the life of the member spouse; and
- (b) not due to the member spouse's invalidity.

# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity) **Schedule 5**

Interest has no guarantee period, or guarantee period has already ended **Part 2**

Clause 2

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## Part 2—Interest has no guarantee period, or guarantee period has already ended

### 2 Application of this Part

This Part sets out the method for determining the gross value, at the relevant date, of a superannuation interest that is in the payment phase at the relevant date, if:

- (a) the interest has no guarantee period; or
- (b) the interest's guarantee period has ended.

### 3 Method

- (1) The method is:

$$B \times \left( P_{y+m} + \left( r \times R_{y+m} \right) \right)$$

where:

**B** means the amount of the annual pension benefit payable in respect of the superannuation interest at the relevant date.

**P<sub>y+m</sub>** means the pension valuation factor calculated in accordance with subclause (2).

**r** means the proportion of the pension that is payable to any surviving spouse of the member spouse on the death of the member spouse, as provided by the trustee under section 90XZB or 90YZR of the Act.

**R<sub>y+m</sub>** means the reversion valuation factor calculated in accordance with subclause (3).

- (2) For the purposes of subclause (1), the pension valuation factor (**P<sub>y+m</sub>**) at the relevant date is:

$$\frac{\left( P_y \times \left( 12 - m \right) \right) + \left( P_{y+1} \times m \right)}{12}$$

where:

**P<sub>y</sub>** means the pension valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age in completed years at the relevant date.

**m** means the number of completed months of the member spouse's age that are not included in the completed years at the relevant date.

**P<sub>y+1</sub>** means the pension valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age at the

# EXPOSURE DRAFT

**Schedule 5** Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)

**Part 2** Interest has no guarantee period, or guarantee period has already ended

## Clause 4

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completion of the next year after the year mentioned in the definition of the factor  $P_y$ .

- (3) For the purposes of subclause (1), the reversion valuation factor ( $R_{y+m}$ ) at the relevant date is:

$$\frac{\left( R_y \times (12 - m) \right) + \left( R_{y+1} \times m \right)}{12}$$

where:

$R_y$  means the reversion valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age in completed years at the relevant date.

$m$  means the number of completed months of the member spouse's age that are not included in the completed years at the relevant date.

$R_{y+1}$  means the reversion valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age at the completion of the next year after the year mentioned in the definition of the factor  $R_y$ .

## 4 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension [indexation rate TBC].

---

| Age at relevant date (in completed years)                      | Valuation factors—[pension indexation rate TBC] |           |         |           |
|--|---|-----------|---------|-----------|
|  | Males   |           | Females |           |
|  | Pension   | Reversion | Pension | Reversion |
| [Factors removed from table for public consultation purposes.] |   |           |         |           |

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## 5 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is [indexation rate TBC].

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| Age at relevant date (in completed years)                      | Valuation factors—[pension indexation rate TBC] |           |         |           |
|--|---|-----------|---------|-----------|
|  | Males   |           | Females |           |
|  | Pension   | Reversion | Pension | Reversion |
| [Factors removed from table for public consultation purposes.] |   |           |         |           |

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# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity) **Schedule 5**

Interest has no guarantee period, or guarantee period has already ended **Part 2**

Clause 6

## 6 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

| Age at relevant date (in completed years)                             | Valuation factors— <i>[pension indexation rate TBC]</i> |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |           |         |           |

## 7 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

| Age at relevant date (in completed years)                             | Valuation factors— <i>[pension indexation rate TBC]</i> |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |           |         |           |

## 8 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

| Age at relevant date (in completed years)                             | Valuation factors— <i>[pension indexation rate TBC]</i> |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |           |         |           |

## 9 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

# EXPOSURE DRAFT

**Schedule 5** Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)

**Part 2** Interest has no guarantee period, or guarantee period has already ended

## Clause 10

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

### 10 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

### 11 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

### 12 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]



# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity) **Schedule 5**

Interest has a guarantee period that is yet to end **Part 3**

Application and method **Division 1**

Clause 13

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## **Part 3—Interest has a guarantee period that is yet to end**

### **Division 1—Application and method**

#### **13 Application of this Part**

This Part sets out the method for determining the gross value, at the relevant date, of a superannuation interest that is in the payment phase at the relevant date, if the interest has a guarantee period that is yet to end.

#### **14 Method**

The method is the sum of:

- (a) the amount worked out under Division 2 to be the present value of the pension benefit payable in respect of the superannuation interest for the guarantee period; and
- (b) the amount worked out under Division 3 to be the present value of the pension benefit payable in respect of the superannuation interest after the end of the guarantee period.

# EXPOSURE DRAFT

**Schedule 5** Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)

**Part 3** Interest has a guarantee period that is yet to end

**Division 2** Present value of the pension payable for the remaining part of the guarantee period

Clause 15

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## **Division 2—Present value of the pension payable for the remaining part of the guarantee period**

### **15 Present value of the pension payable for the remaining part of the guarantee period**

For the purposes of paragraph 14(a), the amount is equal to the amount that would result from Schedule 7 if:

- (a) the benefits in respect of the superannuation interest were confined to the pension benefit payable for the guarantee period; and
- (b) the pension benefit payable for the guarantee period were treated as a pension for a fixed term ending at the end of the guarantee period.

Note: Paragraph (b) means, for example, that a reference in Schedule 7 to the remaining term of the pension is treated as if it were a reference to the remaining part of the guarantee period.

# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity) **Schedule 5**

Interest has a guarantee period that is yet to end **Part 3**

Present value of the pension payable after the end of the guarantee period **Division 3**

Clause 16

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## Division 3—Present value of the pension payable after the end of the guarantee period

### 16 Present value of the pension payable after the end of the guarantee period

For the purposes of paragraph 14(b), the amount is:

$$\left( D_{y+m} \times S_{x+t, y+m} \right) \times \left( B \times \left( P_{2z+v} + \left( r \times R_{z+v} \right) \right) \right)$$

where:

$D_{y+m}$  means the discount valuation factor calculated in accordance with clause 17.

$S_{x+t, y+m}$  means the survival valuation factor calculated in accordance with clause 18.

$B$  means the amount of the annual pension benefit payable in respect of the superannuation interest at the relevant date.

$P_{2z+v}$  means the pension valuation factor calculated in accordance with clause 19.

$r$  means the proportion of the pension that is payable to any surviving spouse of the member spouse on the death of the member spouse, as provided by the trustee under section 90XZB or 90YZR of the Act.

$R_{z+v}$  means the reversion valuation factor calculated in accordance with clause 20.

### 17 Meaning of *discount valuation factor*

(1) For the purposes of clause 16,  $D_{y+m}$  is:

$$\frac{\left( D_y \times \left( 12 - m \right) \right) + \left( D_{y+1} \times m \right)}{12}$$

where:

$D_y$  means the discount valuation factor mentioned in subclause (2) that applies to the pension and the remaining guarantee period of the pension in complete years at the relevant date.

$m$  means the number of complete months of the remaining guarantee period of the pension that are not included in the remaining complete years at the relevant date.

$D_{y+1}$  means the discount valuation factor mentioned in subclause (2) that would apply to the pension and the remaining guarantee period of the pension if the remaining guarantee period at the relevant date were one year more than the actual remaining guarantee period at that date.

# EXPOSURE DRAFT

**Schedule 5** Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)

**Part 3** Interest has a guarantee period that is yet to end

**Division 3** Present value of the pension payable after the end of the guarantee period

## Clause 18

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### *Discount valuation factors*

- (2) The discount valuation factors that apply are as in the table at the end of this clause. The columns of the table deal with the following:
- (a) column 1 sets out the remaining guarantee period (in complete years);
  - (b) column 2 applies if the pension is [*indexation rate TBC*];
  - (c) column 3 applies if the pension is [*indexation rate TBC*];
  - (d) column 4 applies if the pension is [*indexation rate TBC*];
  - (e) column 5 applies if the pension is [*indexation rate TBC*];
  - (f) column 6 applies if the pension is [*indexation rate TBC*];
  - (g) column 7 applies if the pension is [*indexation rate TBC*];
  - (h) column 8 applies if the pension is [*indexation rate TBC*];
  - (i) column 9 applies if the pension is [*indexation rate TBC*];
  - (j) column 10 applies if the pension is [*indexation rate TBC*].

- (3) In this clause:

**CPI** means the consumer price index.

**wage indexed pension** means a pension indexed in accordance with a general wage index (for example, average weekly earnings, or average weekly ordinary time earnings, published by the Australian Bureau of Statistics).

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| <b>RGP</b> | <b>Discount valuation factors</b> |          |          |          |          |          |          |          |           |  |
|------------|-----------------------------------|----------|----------|----------|----------|----------|----------|----------|-----------|--|
|            | <b>2</b>                          | <b>3</b> | <b>4</b> | <b>5</b> | <b>6</b> | <b>7</b> | <b>8</b> | <b>9</b> | <b>10</b> |  |

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*[Factors removed from table for public consultation purposes.]*

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## 18 Meaning of *survival valuation factor*

- (1) For the purposes of clause 16,  $S_{x+t, y+m}$  is:

$$\frac{\left( S_{x+t, y} \times (12 - m) \right) + \left( S_{x+t, y+1} \times m \right)}{12}$$

where:

$S_{x+t, y}$  means:

$$\frac{\left( S_{x, y} \times (12 - t) \right) + \left( S_{x+1, y} \times t \right)}{12}$$

**m** means the number of complete months of the remaining guarantee period of the pension that are not included in the remaining complete years at the relevant date.

# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity) **Schedule 5**

Interest has a guarantee period that is yet to end **Part 3**

Present value of the pension payable after the end of the guarantee period **Division 3**

Clause 18

$S_{x+t, y+t}$  means:

$$\frac{\left( S_{x, y+1} \times (12 - t) \right) + \left( S_{x+1, y+1} \times t \right)}{12}$$

$x$  means the member spouse's age in completed years at the relevant date.

$y$  means the remaining guarantee period of the pension in complete years at the relevant date.

$t$  means the number of completed months of the member spouse's age that are not included in the completed years at the relevant date.

$S_{x, y}$  means the survival valuation factor mentioned in subclause (2) or (3) that applies to:

- (a) the member spouse; and
- (b) the member spouse's age in completed years at the relevant date; and
- (c) the remaining guarantee period of the pension in completed years at the relevant date.

$S_{x+t, y}$  means the survival valuation factor mentioned in subclause (2) or (3) that would apply to:

- (a) the member spouse; and
- (b) the remaining guarantee period of the pension in completed years at the relevant date;

if the member spouse's age in completed years at the relevant date was one year more than the member spouse's actual age in completed years at that date.

*Survival valuation factors for males*

(2) The survival valuation factors that apply for males are as follows:

| Remaining guaranteed period (in completed years)                      |   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|---|----|
| Age   | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |   |   |   |   |   |   |   |   |    |

*Survival valuation factors for females*

(3) The survival valuation factors that apply for females are as follows:

| Remaining guaranteed period (in completed years)                      |   |   |   |   |   |   |   |   |   |    |
|---|---|---|---|---|---|---|---|---|---|----|
| Age   | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |   |   |   |   |   |   |   |   |    |

# EXPOSURE DRAFT

**Schedule 5** Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity)

**Part 3** Interest has a guarantee period that is yet to end

**Division 3** Present value of the pension payable after the end of the guarantee period

Clause 19

---

## 19 Meaning of *pension valuation factor*

For the purposes of clause 16,  $P_{z+v}$  is:

$$\frac{\left( P_{2z} \times \left( 12 - v \right) \right) + \left( P_{2z+1} \times v \right)}{12}$$

where:

$P_{2z}$  means the pension valuation factor that would apply if:

- (a) clause 4 applied to the pension; and
- (b) for the purposes of that clause, the member spouse's age at the relevant date (in completed years) were  $z$ .

$P_{2z+1}$  means the pension valuation factor that would apply if:

- (a) clause 4 applied to the pension; and
- (b) for the purposes of that clause, the member spouse's age at the relevant date (in completed years) were the sum of  $z$  and 1.

$z$  is equal to one of the following:

- (a) if the sum of  $t$  and  $m$  is greater than or equal to 12—the sum of  $x$ ,  $y$  and 1;
- (b) if the sum of  $t$  and  $m$  is less than 12—the sum of  $x$  and  $y$ .

$t$  means the number of completed months of the member spouse's age that are not included in the completed years at the relevant date.

$m$  means the number of complete months of the remaining guarantee period of the pension that are not included in the remaining complete years at the relevant date.

$x$  means the member spouse's age in completed years at the relevant date.

$y$  means the remaining guarantee period of the pension in complete years at the relevant date.

$v$  is equal to one of the following:

- (a) if the sum of  $t$  and  $m$  is greater than or equal to 12—the result of adding  $t$  and  $m$ , and subtracting 12;
- (b) if the sum of  $t$  and  $m$  is less than 12—the sum of  $t$  and  $m$ .

## 20 Meaning of *reversion valuation factor*

For the purposes of clause 16,  $R_{z+v}$  is:

$$\frac{\left( R_z \times \left( 12 - v \right) \right) + \left( R_{z+1} \times v \right)}{12}$$

where:

$R_z$  means the reversion valuation factor that would apply if:

- (a) clause 4 applied to the pension; and

# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension (otherwise than due to invalidity) **Schedule 5**

Interest has a guarantee period that is yet to end **Part 3**

Present value of the pension payable after the end of the guarantee period **Division 3**

Clause 20

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- (b) for the purposes of that clause, the member spouse's age at the relevant date (in completed years) were  $z$ .

$R_{z+1}$  means the reversion valuation factor that would apply if:

- (a) clause 4 applied to the pension; and  
(b) for the purposes of that clause, the member spouse's age at the relevant date (in completed years) were the sum of  $z$  and 1.

$z$ ,  $t$ ,  $m$ ,  $x$ ,  $y$  and  $v$  have the same meanings as in clause 19.

# EXPOSURE DRAFT

**Schedule 6** Method for determining gross value of superannuation interest payable as life pension due to invalidity

Clause 1

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## **Schedule 6—Method for determining gross value of superannuation interest payable as life pension due to invalidity**

(paragraph 66(2)(b))

### **1 Application of this Schedule**

This Schedule sets out the method for determining the gross value, at the relevant date, of a superannuation interest that is in the payment phase at the relevant date, if the benefits in respect of the interest are payable:

- (a) as a pension for the life of the member spouse; and
- (b) due to the member spouse's invalidity.

### **2 Method**

- (1) The method is:

$$B \times \left( P_{y+m} + \left( r \times R_{y+m} \right) \right)$$

where:

***B*** means the amount of the annual pension benefit payable in respect of the superannuation interest at the relevant date.

***P<sub>y+m</sub>*** means the pension valuation factor calculated in accordance with subclause (2).

***r*** means the proportion of the pension that is payable to any surviving spouse of the member spouse on the death of the member spouse, as provided by the trustee under section 90XZB or 90YZR of the Act.

***R<sub>y+m</sub>*** means the reversion valuation factor calculated in accordance with subclause (3).

- (2) For the purposes of subclause (1), the pension valuation factor (***P<sub>y+m</sub>***) at the relevant date is:

$$\frac{\left( P_y \times \left( 12 - m \right) \right) + \left( P_{y+1} \times m \right)}{12}$$

where:

***P<sub>y</sub>*** means the pension valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age in completed years at the relevant date.

***m*** means the number of completed months of the member spouse's age that are not included in the completed years at the relevant date.



# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension due to invalidity  
Schedule 6

Clause 3

$P_{y+1}$  means the pension valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age at the completion of the next year after the year mentioned in the definition of the factor  $P_y$ .

- (3) For the purposes of subclause (1), the reversion valuation factor ( $R_{y+m}$ ) at the relevant date is:

$$\frac{\left( R_y \times (12 - m) \right) + \left( R_{y+1} \times m \right)}{12}$$

where:

$R_y$  means the reversion valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age in completed years at the relevant date.

$m$  means the number of completed months of the member spouse's age that are not included in the completed years at the relevant date.

$R_{y+1}$  means the reversion valuation factor mentioned in the relevant clause of this Schedule that applies to the pension and the member spouse's age at the completion of the next year after the year mentioned in the definition of the factor  $R_y$ .

### 3 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

### 4 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

# EXPOSURE DRAFT

**Schedule 6** Method for determining gross value of superannuation interest payable as life pension due to invalidity

Clause 5

## 5 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

| Age at relevant date (in completed years)                             | Valuation factors— <i>[pension indexation rate TBC]</i> |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |           |         |           |

## 6 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

| Age at relevant date (in completed years)                             | Valuation factors— <i>[pension indexation rate TBC]</i> |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |           |         |           |

## 7 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

| Age at relevant date (in completed years)                             | Valuation factors— <i>[pension indexation rate TBC]</i> |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |
| <i>[Factors removed from table for public consultation purposes.]</i> |   |           |         |           |

## 8 Valuation factors—*[pension indexation rate TBC]*

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is *[indexation rate TBC]*.

# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as life pension due to invalidity  
Schedule 6

Clause 9

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

## 9 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males                                   |           | Females |           |
|   | Pension                                 | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

## 10 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

## 11 Valuation factors—[pension indexation rate TBC]

The pension valuation factors and reversion valuation factors set out in this clause apply if the pension is [indexation rate TBC].

| Age at relevant date (in completed years) | Valuation factors—[pension indexation rate TBC] |           |         |           |
|---|---|-----------|---------|-----------|
|   | Males   |           | Females |           |
|   | Pension   | Reversion | Pension | Reversion |

[Factors removed from table for public consultation purposes.]

# EXPOSURE DRAFT

**Schedule 7** Method for determining gross value of superannuation interest payable as fixed-term pension

Clause 1

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## **Schedule 7—Method for determining gross value of superannuation interest payable as fixed-term pension**

(subsection 66(3))

### **1 Application of this Schedule**

This Schedule sets out the method for determining the gross value, at the relevant date, of a superannuation interest that is in the payment phase at the relevant date, if the benefits in respect of the interest are payable as a pension for a fixed term.

### **2 Method**

- (1) The method is:

$$B \times P_{y+m}$$

where:

**B** means the value of the annual pension benefit payable in respect of the superannuation interest at the relevant date.

**P<sub>y+m</sub>** means the pension valuation factor calculated in accordance with subclause (2).

- (2) For the purposes of subclause (1), the pension valuation factor (**P<sub>y+m</sub>**) at the relevant date is:

$$\frac{\left( P_y \times \left( 12 - m \right) \right) + \left( P_{y+1} \times m \right)}{12}$$

where:

**P<sub>y</sub>** means the pension valuation factor mentioned in clause 3 of this Schedule that applies to the pension and the remaining term of the pension in complete years at the relevant date.

**m** means the number of complete months of the remaining term of the pension that are not included in the remaining complete years at the relevant date.

**P<sub>y+1</sub>** means the pension valuation factor mentioned in clause 3 of this Schedule that would apply to the pension if the remaining term of the pension at the relevant date were one year more than the actual remaining term of the pension at that date.

# EXPOSURE DRAFT

Method for determining gross value of superannuation interest payable as fixed-term pension  
Schedule 7

Clause 3

## 3 Pension valuation factors

- (1) The table at the end of this clause sets out the pension valuation factors. The columns of the table deal with the following:
- (a) column 1 sets out the remaining term of the pension (in complete years);
  - (b) column 2 applies if the pension is *[indexation rate TBC]*;
  - (c) column 3 applies if the pension is *[indexation rate TBC]*;
  - (d) column 4 applies if the pension is *[indexation rate TBC]*;
  - (e) column 5 applies if the pension is *[indexation rate TBC]*;
  - (f) column 6 applies if the pension is *[indexation rate TBC]*;
  - (g) column 7 applies if the pension is *[indexation rate TBC]*;
  - (h) column 8 applies if the pension is *[indexation rate TBC]*;
  - (i) column 9 applies if the pension is *[indexation rate TBC]*;
  - (j) column 10 applies if the pension is *[indexation rate TBC]*.
- (2) In this clause:

**CPI** means the consumer price index.

**wage indexed pension** means a pension indexed in accordance with a general wage index (for example, average weekly earnings, or average weekly ordinary time earnings, published by the Australian Bureau of Statistics).

| RTP   | Pension valuation factors |   |   |   |   |   |   |   |    |  |
|---|---------------------------|---|---|---|---|---|---|---|----|--|
|   | 2                         | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |  |
| <i>[Factors removed from table for public consultation purposes.]</i> |                           |   |   |   |   |   |   |   |    |  |

# EXPOSURE DRAFT

**Schedule 8** Method for determining gross value of superannuation interest payable as pension and future lump sum

Clause 1

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## **Schedule 8—Method for determining gross value of superannuation interest payable as pension and future lump sum**

(subsection 67(3))

### **1 Application of this Schedule**

This Schedule sets out the method for determining the gross value, at the relevant date, of a superannuation interest that is in the payment phase at the relevant date, if:

- (a) part of the benefits in respect of the interest is being paid as a pension at the relevant date; and
- (b) the remaining part of the benefits is payable, at any time after the relevant date, as a lump sum that is not a commutation of the pension.

### **2 Definitions**

In this Schedule:

**minimum deferral period**, in relation to a lump sum that is to be paid to a member spouse at any time after the relevant date, means the minimum period until the lump sum may be paid to the member spouse.

**nominal value**, of a lump sum at a particular date, means:

- (a) subject to paragraph (b), the value of the lump sum at that date; or
- (b) if the value of the lump sum is expressed as an amount of dollars to be paid at a time after that date, that amount.

### **3 Method**

- (1) The method is:

$GVP + GVLS$

where:

**GVP** means the gross value of the pension, determined in accordance with section 66.

**GVLS** means the gross value of the lump sum, determined using the method of valuation set out in subclause (2).

- (2) For the purposes of subclause (1), the method of determining the gross value of the lump sum (**GVLS**) is:

$LS \times D_{y+m}$

where:

**LS** means the nominal value of the lump sum at the relevant date.

# EXPOSURE DRAFT

$D_{y+m}$  means the discount valuation factor calculated in accordance with subclause (3).

- (3) For the purposes of subclause (2), the discount valuation factor ( $D_{y+m}$ ) at the relevant date is:

$$\frac{\left( D_y \times (12 - m) \right) + \left( D_{y+1} \times m \right)}{12}$$

where:

$D_y$  means the discount valuation factor mentioned in clause 4 of this Schedule that applies to the lump sum and the minimum deferral period in complete years at the relevant date.

$m$  means the number of complete months of the minimum deferral period applicable to the lump sum that are not included in the remaining complete years of that period at the relevant date.

$D_{y+1}$  means the discount valuation factor mentioned in clause 4 of this Schedule that applies to the lump sum and the minimum deferral period applicable to the lump sum at the completion of the next year after the year mentioned in the definition of the factor  $D_y$ .

## 4 Discount valuation factors

- (1) This clause sets out the discount valuation factors.
- (2) If the lump sum is indexed in accordance with a fund crediting rate, the factor is 1.
- (3) For this Schedule, a lump sum is taken to be not indexed if the nominal value of the lump sum is an amount within the meaning of paragraph (b) of the definition of **nominal value** in clause 2.
- (4) In this clause:

**CPI** means the consumer price index.

**wage indexed pension** means a pension indexed in accordance with a general wage index (for example, average weekly earnings, or average weekly ordinary time earnings, published by the Australian Bureau of Statistics).

| Minimum deferral period for lump sum (in complete years) | Discount valuation factors           |                                      |                                   |
|--|--------------------------------------|--------------------------------------|-----------------------------------|
|  | Lump sum<br>[indexation rate<br>TBC] | Lump sum<br>[indexation rate<br>TBC] | Lump sum<br>[indexation rate TBC] |

[Factors removed from table for public consultation purposes.]

# EXPOSURE DRAFT

Schedule 9 Modifications of Division 2 of Part 7

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## Schedule 9—Modifications of Division 2 of Part 7

(subsection 76(2))

### 1 Paragraph 77(1)(c)

Omit the paragraph, substitute:

- (c) the lump sum is greater than or equal to the sum of each adjusted base amount applicable to the non-member spouse and to each other person under a payment split with an earlier operative time.

### 2 Paragraph 78(1)(c)

Omit the paragraph, substitute:

- (c) the lump sum is less than the sum of each adjusted base amount applicable to the non-member spouse and to each other person under a payment split with an earlier operative time.

### 3 Paragraph 78(2)(a)

Omit the paragraph, substitute:

- (a) the amount remaining from the lump sum after each other person has received, under this section, the amount that other person is entitled to under a payment split with an earlier operative time; and

### 4 Subsection 79(6) (definition of *remaining value of the superannuation interest*)

Omit the definition, substitute:

*remaining value of the superannuation interest* is the remaining value of the superannuation interest after the payment of the lump sums, under paragraph 78(2)(a) and paragraph (4)(c) of this section, to each other person under a payment split with an earlier operative time, and to the non-member spouse, calculated in accordance with subsection (7) of this section.

### 5 Subsection 79(7)

Omit the subsection, substitute:

- (7) For the purposes of subsection (6), the remaining value of the superannuation interest after the payment of the lump sums to all of the following persons (the *eligible recipients*):

- (a) each other person under a payment split with an earlier operative time;
- (b) the non-member spouse;

under paragraph 78(2)(a) and paragraph (4)(c) of this section is the amount equal to the sum of the following calculated for each of the eligible recipients:

$$\text{Deemed value of the interest were it in payment phase at adjusted date} - \text{Initial lump sum} - \left( \frac{\text{Other lump sum} \times \text{Pension valuation factor for the interest}}{\text{Commutation factor for the interest}} \right)$$



# EXPOSURE DRAFT

Modifications of Division 2 of Part 7 **Schedule 9**

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where:

***deemed value of the interest were it in payment phase at adjusted date*** means the amount that would be calculated under section 64 for the superannuation interest if references in Division 2 of Part 6 to the relevant date were references to the date the first splittable payment became payable in respect of the superannuation interest to the eligible recipient.

***initial lump sum*** means the amount of the lump sum paid to the eligible recipient under paragraph 78(2)(a).

***other lump sum*** means the amount of the lump sum paid to the eligible recipient under paragraph (4)(b).

Note: For the meanings of ***commutation factor*** and ***pension valuation factor***, see section 70.