





# **Superannuation Legislation Amendment (Western Australia De Facto Superannuation Splitting) Regulations 2021**

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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 16 December 2021

David Hurley  
Governor-General

By His Excellency's Command

Michaelia Cash  
Attorney-General

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## 1 Name

This instrument is the *Superannuation Legislation Amendment (Western Australia De Facto Superannuation Splitting) Regulations 2021*.

## 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	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of the <i>Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020</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Note: This table relates only to the provisions of this instrument as originally made.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 following:

- (a) the *Family Law Act 1975*;
- (b) the *Judges' Pensions Act 1968*;
- (c) the *Papua New Guinea (Staffing Assistance) Act 1973*;
- (d) the *Retirement Savings Accounts Act 1997*;
- (e) the *Small Superannuation Accounts Act 1995*;
- (f) the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;
- (g) the *Superannuation Guarantee (Administration) Act 1992*;
- (h) the *Superannuation Industry (Supervision) Act 1993*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Family Law (Superannuation) Regulations 2001*

#### 1 Regulation 3

Repeal the following definitions:

- (a) definition of *approved deposit fund*;
- (b) definition of *eligible superannuation plan*;
- (c) definition of *flag lifting agreement*;
- (d) definition of *interest*;
- (e) definition of *member*;
- (f) definition of *member spouse*;
- (g) definition of *non-member spouse*;
- (h) definition of *operative time*;
- (i) definition of *payment flag*;
- (j) definition of *payment split*;
- (k) definition of *regulated superannuation fund*;
- (l) definition of *RSA*;
- (m) definition of *secondary government trustee*;
- (n) definition of *SIS Act*;
- (o) definition of *splittable payment*;
- (p) definition of *splitting order*;
- (q) definition of *superannuation agreement*;
- (r) definition of *superannuation interest*;
- (s) definition of *trustee*.

#### 2 Regulation 4

Repeal the regulation, substitute:

#### 4 Expressions used in Part VIII B or VIII C of the Act

An expression used in these Regulations that is also used in Part VIII B or VIII C of the Act has the same meaning as in that Part, to the extent that these Regulations have effect for the purposes of that Part.

Note: See sections 90XD and 90YD of the Act for definitions in Parts VIII B and VIII C, respectively, of the Act.

#### 3 Regulation 9A (heading)

Omit “90MD”, substitute “90XD, s 90YD”.

#### 4 Subregulation 9A(1)

Omit “definition of *percentage-only interest* in section 90MD”, substitute “definitions of *percentage-only interest* in sections 90XD and 90YD”.

#### 5 Subparagraph 9A(2)(a)(ii)

Omit “90MJ(5)”, substitute “90XJ(5) or 90YN(5)”.

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**6 Paragraph 9A(2)(c)**

Omit “90MZA”, substitute “90XZA or 90YZQ”.

**7 Regulation 10 (heading)**

Omit “90MD”, substitute “90XD, s 90YD”.

**8 Subregulation 10(1)**

Omit “definition of *trustee* in section 90MD”, substitute “definitions of *trustee* in sections 90XD and 90YD”.

**9 Regulation 10A (heading)**

Omit “90MD”, substitute “90XD, s 90YD”.

**10 Regulation 10A**

Omit “definition of *unflaggable interest* in section 90MD”, substitute “definitions of *unflaggable interest* in sections 90XD and 90YD”.

**11 Regulation 11 (heading)**

Omit “90MD”, substitute “90XD, 90YD”.

**12 Subregulation 11(1)**

Omit “definition of *unsplittable interest* in section 90MD”, substitute “definitions of *unsplittable interest* in sections 90XD and 90YD”.

**13 Regulation 12 (heading)**

Omit “90ME”, substitute “90XE, s 90YG”.

**14 Subregulation 12(1)**

Omit “subsection 90ME(2)”, substitute “subsections 90XE(2) and 90YG(2)”.

**15 Regulation 13 (heading)**

Omit “90ME”, substitute “90XE, s 90YG”.

**16 Subregulation 13(1)**

Omit “subsection 90ME(2)”, substitute “subsections 90XE(2) and 90YG(2)”.

**17 Regulation 14**

After “Part VIII B”, insert “or VIII C”.

**18 Paragraph 14G(8)(b)**

Omit “90MJ(1)(c)(iii) or paragraph 90MT(1)(b)”, substitute “90XJ(1)(c)(iii) or 90YN(1)(c)(iii), or paragraph 90XT(1)(b) or 90YY(1)(b),”.

**19 Paragraph 14G(9)(d)**

Omit “90MT(4)”, substitute “90XT(4) or 90YY(5)”.

**20 Subregulation 14G(10) (paragraph (a) of the definition of V)**

Omit “90MT(2)(b)”, substitute “90XT(2)(b) or 90YY(2)(b) (as the case may be)”.

**21 Paragraph 14G(11)(c)**

Omit “90MT(2)(b)”, substitute “90XT(2)(b) or 90YY(2)(b) (as the case may be)”.

**22 Subparagraph 14N(7)(a)(i)**

Omit “90MJ(1)(b)(i)”, substitute “90XJ(1)(b)(i) or 90YN(1)(b)(i) (as the case may be)”.

**23 Subparagraph 14N(7)(a)(ii)**

Omit “90MT(1)(c)”, substitute “90XT(1)(c) or 90YY(1)(c)”.

**24 Subparagraph 14N(7)(b)(i)**

Omit “90MJ(1)(b)(ii)”, substitute “90XJ(1)(b)(ii) or 90YN(1)(b)(ii) (as the case may be)”.

**25 Subparagraph 14N(7)(b)(ii)**

Omit “90MT(1)(b)”, substitute “90XT(1)(b) or 90YY(1)(b)”.

**26 Regulation 15 (heading)**

Omit “90MJ”, substitute “90XJ, s 90YN”.

**27 Subparagraph 15(b)(i)**

After “Part VIIIB”, insert “or VIIC”.

**28 Subparagraph 15(b)(ii)**

Omit “90MI”, substitute “90XI or 90YM”.

**29 Paragraph 16(1)(b)**

Omit “90MI”, substitute “90XI or 90YM”.

**30 Paragraph 17(1)(b)**

Omit “90MI”, substitute “90XI or 90YM”.

**31 Regulation 18 (heading)**

Omit “90MJ”, substitute “90XJ, s 90YN”.

**32 Paragraph 18(b)**

Omit “90MJ(1)(b)(i)”, substitute “90XJ(1)(b)(i) or 90YN(1)(b)(i) (as the case may be)”.

**33 Regulation 20 (heading)**

Omit “90MQ”, substitute “90XQ, 90YV”.

**34 Regulation 20**

Omit “subsection 90MQ(3)”, substitute “subsections 90XQ(3) and 90YV(3)”.

**35 Regulation 21 (heading)**

Omit “90MT”, substitute “90XT, s 90YY”.

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**36 Subregulation 22(2) (note 2)**

Omit “paragraph 90MT(2)(b)”, substitute “paragraphs 90XT(2)(b) and 90YY(2)(b)”.

**37 Paragraph 23(1)(a)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**38 Regulation 25 (heading)**

Omit “90MT”, substitute “90XT, s 90YY”.

**39 Regulation 27 (heading)**

Omit “90MT”, substitute “90XT, s 90YY”.

**40 Regulation 27**

Omit “paragraph 90MT(2)(a)”, substitute “paragraphs 90XT(2)(a) and 90YY(2)(a)”.

**41 Regulation 39 (heading)**

Omit “90MT”, substitute “90XT, s 90YY”.

**42 Regulation 39**

Omit “paragraph 90MT(2)(a)”, substitute “paragraphs 90XT(2)(a) and 90YY(2)(a)”.

**43 Subparagraph 45(1)(a)(i)**

After “Part VIII B”, insert “or VIII C”.

**44 Paragraph 45(1)(b)**

Omit “90MT(4)”, substitute “90XT(4) or 90YY(5)”.

**45 Paragraph 45A(3)(a)**

Omit “90MI”, substitute “90XI or 90YM”.

**46 Regulation 46 (heading)**

Omit “90MJ, s 90MT”, substitute “90XJ, s 90XT, s 90YN, s 90YY”.

**47 Subregulation 46(1)**

Omit “section 90MJ”, substitute “sections 90XJ and 90YN”.

**48 Subregulation 46(1)**

Omit “paragraph 90MT(1)(a)”, substitute “paragraphs 90XT(1)(a) and 90YY(1)(a)”.

**49 Paragraph 46(1)(b)**

Omit “90MI”, substitute “90XI or 90YM”.

**50 Subregulation 46(2) (note)**

Omit “Section 90MX of the Act makes provision”, substitute “Sections 90XX and 90YZN of the Act provide”.

**51 Subregulation 51(3) (paragraph (d) of the definition of *Comm*)**

Omit “90ME(1)(d)”, substitute “90XE(1)(d) or 90YD(1)(d)”.

**52 Regulation 55 (heading)**

Omit “90MJ, s 90MT”, substitute “90XJ, s 90XT, s 90YN, s 90YY”.

**53 Regulation 55**

Omit “section 90MJ”, substitute “sections 90XJ and 90YN”.

**54 Regulation 55**

Omit “paragraph 90MT(1)(a)”, substitute “paragraphs 90XT(1)(a) and 90YY(1)(a)”.

**55 Subparagraph 55(b)(ii)**

Omit “90MI”, substitute “90XI or 90YM”.

**56 Paragraph 55(c)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**57 Subregulation 58D(2) (note)**

Omit “subsection 90MX(3)”, substitute “subsections 90XX(3) and 90YZN(3)”.

**58 Regulation 59 (heading)**

Omit “90MY”, substitute “90XY, s 90YZO”.

**59 Paragraph 59(1)(d)**

Omit “90MM”, substitute “90XM or 90YR”.

**60 Paragraph 59(1)(e)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**61 Regulation 60 (heading)**

Omit “90MZA”, substitute “90XZA, s 90YZQ”.

**62 Subregulation 60(1)**

Omit “subsection 90MZA(2)”, substitute “subsections 90XZA(2) and 90YZQ(2)”.

**63 Subregulation 60(2)**

Omit “paragraph 90MZA(2)(a)”, substitute “paragraphs 90XZA(2)(a) and 90YZQ(2)(a)”.

**64 Paragraph 60(2)(a)**

Omit “paragraph 90MZA(2)(a)”, substitute “paragraph 90XZA(2)(a) or 90YZQ(2)(a) (as the case may be)”.

**65 Regulation 62 (heading)**

Omit “90MZB”, substitute “90XZB, s 90YZR”.

**66 Regulation 62**

Omit “subsection 90MZB(2)”, substitute “subsections 90XZB(2) and 90YZR(2)”.

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**67 Regulation 62**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**68 Regulation 63 (heading)**

Omit “90MZB”, substitute “90XZB, 90YZR”.

**69 Subregulation 63(2)**

Omit “subsection 90MZB(3)”, substitute “subsections 90XZB(3) and 90YZR(3)”.

**70 Paragraph 63(5)(b)**

Omit “90MJ(1)(c)(i) or (ii)”, substitute “90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii)”.

**71 Paragraph 63(5)(b)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**72 Paragraph 63(5)(c)**

Omit “90MJ(1)(c)(i)”, substitute “90XJ(1)(c)(i) or 90YN(1)(c)(i)”.

**73 Paragraph 63(5)(c)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**74 Paragraph 63(5)(d)**

Omit “90MJ(1)(c)(ii)”, substitute “90XJ(1)(c)(ii) or 90YN(1)(c)(ii)”.

**75 Subparagraph 63(5)(d)(i)**

Omit “90MI(b)”, substitute “90XI(1)(b) or 90YM(1)(b)”.

**76 Paragraph 63(5)(e)**

Omit “90MJ(1)(c)(iii)”, substitute “90XJ(1)(c)(iii) or 90YN(1)(c)(iii)”.

**77 Paragraph 63(5)(e)**

Omit “90MT(1)(b)”, substitute “90XT(1)(b) or 90YY(1)(b)”.

**78 Regulation 63A (heading)**

Omit “90MZB”, substitute “90XZB, s 90YZR”.

**79 Subregulation 63A(1)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**80 Regulation 64 (heading)**

Omit “90MZB”, substitute “90XZB, s 90YZR”.

**81 Subregulation 64(2)**

Omit “subsection 90MZB(3)”, substitute “subsections 90XZB(3) and 90YZR(3)”.

**82 Paragraph 64(5)(b)**

Omit “90MJ(1)(c)(i) or (ii)”, substitute “90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii)”.

**83 Paragraph 64(5)(b)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**84 Paragraph 64(5)(c)**

Omit “90MJ(1)(c)(i)”, substitute “90XJ(1)(c)(i) or 90YN(1)(c)(i)”.

**85 Paragraph 64(5)(c)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**86 Paragraph 64(5)(d)**

Omit “90MJ(1)(c)(ii)”, substitute “90XJ(1)(c)(ii) or 90YN(1)(c)(ii)”.

**87 Subparagraph 64(5)(d)(i)**

Omit “90MI(b)”, substitute “90XI(1)(b) or 90YM(1)(b)”.

**88 Paragraph 64(5)(e)**

Omit “90MJ(1)(c)(iii)”, substitute “90XJ(1)(c)(iii) or 90YN(1)(c)(iii)”.

**89 Paragraph 64(5)(e)**

Omit “90MT(1)(b)”, substitute “90XT(1)(b) or 90YY(1)(b)”.

**90 Subregulation 64A(2)**

Repeal the subregulation.

**91 Subregulations 64A(3) and (4)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**92 Regulation 66 (heading)**

Omit “90MZB”, substitute “90XZB, s 90YZR”.

**93 Subregulation 66(2)**

Omit “subsection 90MZB(3)”, substitute “subsections 90XZB(3) and 90YZR(3)”.

**94 Paragraph 66(5)(b)**

Omit “90MJ(1)(b)”, substitute “90XJ(1)(b) or 90YN(1)(b)”.

**95 Subparagraph 66(5)(b)(ii)**

Omit “90MJ(1)(b)(i)”, substitute “90XJ(1)(b)(i) or 90YN(1)(b)(i) (as the case may be)”.

**96 Paragraph 66(5)(c)**

Omit “90MT(1)(b)”, substitute “90XT(1)(b) or 90YY(1)(b)”.

**97 Paragraph 66(5)(d)**

Omit “90MT(1)(c)”, substitute “90XT(1)(c) or 90YY(1)(c)”.

**98 Regulation 67 (heading)**

Omit “90MZB”, substitute “90XZB, s 90YZR”.

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**99 Subregulation 67(2)**

Omit “subsection 90MZB(3)”, substitute “subsections 90XZB(3) and 90YZR(3)”.

**100 Paragraph 67(4)(b)**

Omit “90MJ(1)(c)(i) or (ii)”, substitute “90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii)”.

**101 Paragraph 67(4)(b)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**102 Paragraph 67(4)(c)**

Omit “90MJ(1)(c)(i)”, substitute “90XJ(1)(c)(i) or 90YN(1)(c)(i)”.

**103 Paragraph 67(4)(c)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**104 Paragraph 67(4)(d)**

Omit “90MJ(1)(c)(ii)”, substitute “90XJ(1)(c)(ii) or 90YN(1)(c)(ii)”.

**105 Subparagraph 67(4)(d)(i)**

Omit “90MI(b)”, substitute “90XI(1)(b) or 90YM(1)(b)”.

**106 Paragraph 67(4)(e)**

Omit “90MJ(1)(c)(iii)”, substitute “90XJ(1)(c)(iii) or 90YN(1)(c)(iii)”.

**107 Paragraph 67(4)(e)**

Omit “90MT(1)(b)”, substitute “90XT(1)(b) or 90YY(1)(b)”.

**108 Regulation 68 (heading)**

Omit “**90MZB**”, substitute “**90XZB, s 90YZR**”.

**109 Subregulation 68(2)**

Omit “subsection 90MZB(3)”, substitute “subsections 90XZB(3) and 90YZR(3)”.

**110 Regulation 68A (heading)**

Omit “**90MZB**”, substitute “**90XZB, s 90YZR**”.

**111 Paragraph 68A(2)(b)**

Omit “90MJ(1)(c)(i)”, substitute “90XJ(1)(c)(i) or 90YN(1)(c)(i)”.

**112 Paragraph 68A(2)(b)**

Omit “90MJ(1)(c)(ii)”, substitute “90XJ(1)(c)(ii) or 90YN(1)(c)(ii)”.

**113 Paragraph 68A(2)(c)**

Omit “90MI”, substitute “90XI or 90YM”.

**114 Paragraph 68A(3)(a)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**115 Subregulation 68A(4)**

Omit “subsection 90MZB(3)”, substitute “subsections 90XZB(3) and 90YZR(3)”.

**116 Subregulation 68A(4)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**117 Subregulations 68B(1) and (2)**

Omit “90MZB(3)”, substitute “90XZB(3) or 90YZR(3)”.

**118 Regulation 69 (heading)**

Omit “90MZB”, substitute “90XZB, s 90YZR”.

**119 Subregulation 69(1)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**120 Regulation 70 (heading)**

Omit “90MZB”, substitute “90XZB, s 90YZR”.

**121 Subregulation 70(2)**

Omit “subsection 90MZB(7)”, substitute “subsections 90XZB(7) and 90YZR(7)”.

**122 Subparagraph 70(2)(c)(ii)**

Omit “90MJ(1)(b)(i)”, substitute “90XJ(1)(b)(i) or 90YN(1)(b)(i) (as the case may be)”.

**123 Subparagraph 70(2)(c)(iii)**

Omit “90MT(1)(c)”, substitute “90XT(1)(c) or 90YY(1)(c) (as the case may be)”.

**124 Paragraph 71(1)(ba)**

Omit “90MJ(1)(c)(i) or (ii)”, substitute “90XJ(1)(c)(i) or (ii) or 90YN(1)(c)(i) or (ii)”.

**125 Paragraph 71(1)(ba)**

Omit “90MT(1)(a)”, substitute “90XT(1)(a) or 90YY(1)(a)”.

**126 Schedule 1 (Form 5)**

Omit “90MZA(2)”, substitute “90XZA(2) or 90YZQ(2)”.

**127 Schedule 1 (Form 6)**

Omit “90MZB(2)”, substitute “90XZB(2) or 90YZR(2)”.

**128 Schedule 1 (Form 6)**

Omit “Part VIII B” (wherever occurring), substitute “[Part VIII B/Part VIII C]”.

**129 Part 2 of Schedule 1A (heading)**

Repeal the heading, substitute:

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**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**

**130 Clause 3 of Schedule 1A (heading)**

Repeal the heading, substitute:

**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**

**131 Part 3 of Schedule 1A (heading)**

Repeal the heading, substitute:

**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**

**132 Clause 4 of Schedule 1A (heading)**

Repeal the heading, substitute:

**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**

**133 Subclause 3(1) of Schedule 2 (definition of A)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**134 Subclause 5(2) of Schedule 2 (definition of B)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**135 Subclause 5(2) of Schedule 2 (definition of r)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**136 Subclauses 30(1) and (2) of Schedule 2**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**137 Subclause 34(2) of Schedule 2 (definition of r)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**138 Subclause 36(2) of Schedule 2 (definition of r)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

**139 Subclause 2(1) of Schedule 4 (definition of r)**

Omit “90MZB”, substitute “90XZB or 90YZR”.

### ***Judges' Pensions Regulations 1998***

#### **140 Part 3 (heading)**

Omit "Part VIII B", substitute "Parts VIII B and VIII C".

#### **141 Subregulation 5(1)**

Omit "Part VIII B", substitute "Parts VIII B and VIII C".

### ***Papua New Guinea (Staffing Assistance) (Superannuation) Regulations 1973***

#### **142 Subregulation 90(1) (paragraph (b) of the definition of *base amount*)**

Omit "90MT (4)", substitute "90XT(4) or 90YY(5) (as the case may be)".

#### **143 Subregulation 90(1) (definition of *family law value*)**

Repeal the definition, substitute:

*family law value* means:

- (a) in relation to a superannuation interest within the meaning of Part VIII B of the FL Act—the amount determined in accordance with the FLS Regulations that apply for the purposes of paragraph 90XT(2)(a) of the FL Act; or
- (b) in relation to a superannuation interest within the meaning of Part VIII C of the FL Act—the amount determined in accordance with the FLS Regulations that apply for the purposes of paragraph 90YY(2)(a) of the FL Act.

In applying the FLS Regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying that instrument, whether or not an order has been made under subsection 90XT(1) or 90YY(1) (as the case may be) of the FL Act.

#### **144 Subregulation 90(1) (definition of *member spouse*)**

Repeal the definition, substitute:

*member spouse* means a member spouse within the meaning of Part VIII B or VIII C of the FL Act.

#### **145 Subregulation 90(1) (definition of *non-member spouse*)**

Repeal the definition, substitute:

*non-member spouse* means a non-member spouse within the meaning of Part VIII B or VIII C of the FL Act.

#### **146 Subregulation 90(1) (definition of *operative time*)**

Repeal the definition, substitute:

*operative time* means:

- (a) for a splitting agreement that is a superannuation agreement or a flag lifting agreement within the meaning of Part VIII B of the FL Act or for a splitting order within the meaning of that Part—the time that is the operative time

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for the purposes of that Part in relation to a payment split under the agreement or order; or

- (b) for a splitting agreement that is a superannuation agreement or a flag lifting agreement within the meaning of Part VIIC of the FL Act or for a splitting order within the meaning of that Part—the time that is the operative time for the purposes of that Part in relation to a payment split under the agreement or order.

#### **147 Subregulation 90(1) (definition of *payment split*)**

Repeal the definition, substitute:

*payment split* means a payment split within the meaning of Part VIIB or VIIC of the FL Act.

#### **148 Subregulation 90(1) (paragraphs (a) and (b) of the definition of *splitting agreement*)**

After “VIIB”, insert “or VIIC”.

#### **149 Subregulation 90(1) (definition of *splitting order*)**

Repeal the definition, substitute:

*splitting order* means a splitting order within the meaning of Part VIIB or VIIC of the FL Act.

#### **150 Subregulation 90(1) (definition of *splitting percentage*)**

Repeal the definition, substitute:

*splitting percentage* means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90XJ(1)(c)(iii) or 90YN(1)(c)(iii) (as the case may be) of the FL Act; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90XT(1)(b)(i) or 90YY(1)(b)(i) (as the case may be) of the FL Act.

#### **151 Subregulation 90(1) (definition of *superannuation interest*)**

Repeal the definition, substitute:

*superannuation interest* means a superannuation interest within the meaning of Part VIIB or VIIC of the FL Act.

#### **152 Subregulation 90(2)**

Repeal the subregulation.

#### **153 Paragraph 91(1)(a)**

Omit “additional interest”, substitute “original interest”.

#### **154 In the appropriate position**

Insert:

## Part XII—Application, saving and transitional provisions

### 127 Application of amendments made by the *Superannuation Legislation Amendment (Western Australia De Facto Superannuation Splitting) Regulations 2021*

The amendments of these regulations made by Schedule 1 to the *Superannuation Legislation Amendment (Western Australia De Facto Superannuation Splitting) Regulations 2021* apply to a splitting agreement, or splitting order, if the operative time in relation to a payment split under the agreement or order is after the commencement of that instrument.

### *Retirement Savings Accounts Regulations 1997*

#### 155 Subregulation 1.03(1) (definition of *base amount payment split*)

After “VIII B”, insert “or VIIC”.

#### 156 Subregulation 1.03(1) (definition of *flag lifting agreement*)

Repeal the definition, substitute:

*flag lifting agreement* means a flag lifting agreement within the meaning of Part VIII B or VIIC of the *Family Law Act 1975*.

#### 157 Subregulation 1.03(1) (definition of *member spouse*)

Repeal the definition, substitute:

*member spouse*, in relation to an RSA interest that is subject to a payment split, means the person who is the member spouse within the meaning of Part VIII B or VIIC of the *Family Law Act 1975* in relation to the interest.

#### 158 Subregulation 1.03(1) (definition of *non-member spouse*)

Repeal the definition, substitute:

*non-member spouse*, in relation to an RSA interest that is subject to a payment split, means the person who is the non-member spouse within the meaning of Part VIII B or VIIC of the *Family Law Act 1975* in relation to the interest.

#### 159 Subregulation 1.03(1) (definition of *operative time*)

Repeal the definition, substitute:

*operative time*, for a payment split, means the operative time for the purposes of Part VIII B or VIIC (as the case may be) of the *Family Law Act 1975* for the payment split.

#### 160 Subregulation 1.03(1) (definition of *payment split*)

Repeal the definition, substitute:

*payment split* means a payment split within the meaning of Part VIII B or VIIC of the *Family Law Act 1975*.

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**161 Subregulation 1.03(1) (definition of *splittable payment*)**

Repeal the definition, substitute:

*splittable payment* means a splittable payment within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**162 Subregulation 1.03(1) (definition of *splitting order*)**

Repeal the definition, substitute:

*splitting order* means a splitting order within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**163 Subregulation 1.03(1) (definition of *superannuation agreement*)**

Repeal the definition, substitute:

*superannuation agreement* means a superannuation agreement within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**164 Paragraph 4.20(2)(a)**

Omit “90ML(4)”, substitute “90XL(4) or 90YP(4)”.

**165 Paragraph 4.20(2)(b)**

Omit “90MU(1)”, substitute “90XU(1) or 90YZ(1)”.

**166 Subregulation 4.20(2) (note)**

Repeal the note, substitute:

Note 1: Subsections 90XL(4) and 90YP(4) of the *Family Law Act 1975* provide that while a payment flag is operating on a superannuation interest, the RSA provider must not make any splittable payment to any person in respect of the interest.

Note 2: Subsections 90XU(1) and 90YZ(1) of the *Family Law Act 1975* provide that a court may make an order in relation to a superannuation interest directing the RSA provider not to make a splittable payment without the leave of the court.

**167 Paragraph 4.40(b)**

After “VIIIIB”, insert “or VIIC”.

**168 Subregulation 4.41(1) (note)**

After “VIIIIB”, insert “or VIIC”.

**169 Paragraph 4A.01(a)**

Omit “Part VIIIIB”, substitute “Parts VIIIIB and VIIC”.

***Small Superannuation Accounts Regulations 2018*****170 Section 5 (paragraphs (a) and (b) of the definition of *splitting agreement*)**

After “VIIIIB”, insert “or VIIC”.

**171 Section 5 (definition of *splitting order*)**

Repeal the definition, substitute:

*splitting order* means a splitting order within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

### ***Superannuation Contributions Tax (Assessment and Collection) Regulations 2019***

#### **172 Subsection 6(2)**

After “VIIIIB”, insert “or VIIC”.

### ***Superannuation Guarantee (Administration) Regulations 2018***

#### **173 Paragraphs 6(2)(b) and (f)**

Omit “section 90MD”, substitute “Part VIIIIB or VIIC”.

### ***Superannuation Industry (Supervision) Regulations 1994***

#### **174 Subregulation 1.03(1) (definition of *base amount payment split*)**

After “VIIIIB”, insert “or VIIC”.

#### **175 Subregulation 1.03(1) (definition of *flag lifting agreement*)**

Repeal the definition, substitute:

*flag lifting agreement* means a flag lifting agreement within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

#### **176 Subregulation 1.03(1) (definition of *member spouse*)**

Repeal the definition, substitute:

*member spouse*, in relation to a superannuation interest that is subject to a payment split, means the person who is the member spouse within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975* in relation to the interest.

#### **177 Subregulation 1.03(1) (definition of *non-member spouse*)**

Repeal the definition, substitute:

*non-member spouse*, in relation to a superannuation interest that is subject to a payment split, means the person who is the non-member spouse within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975* in relation to the interest.

#### **178 Subregulation 1.03(1) (definition of *operative time*)**

Repeal the definition, substitute:

*operative time*, for a payment split, means the operative time for the purposes of Part VIIIIB or VIIC (as the case may be) of the *Family Law Act 1975* for the payment split.

#### **179 Subregulation 1.03(1) (definition of *payment split*)**

Repeal the definition, substitute:

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*payment split* means a payment split within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**180 Subregulation 1.03(1) (definition of *percentage-only interest*)**

Repeal the definition, substitute:

*percentage-only interest* means percentage-only interest within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**181 Subregulation 1.03(1) (definition of *splittable payment*)**

Repeal the definition, substitute:

*splittable payment* means a splittable payment within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**182 Subregulation 1.03(1) (definition of *splitting order*)**

Repeal the definition, substitute:

*splitting order* means a splitting order within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**183 Subregulation 1.03(1) (definition of *superannuation agreement*)**

Repeal the definition, substitute:

*superannuation agreement* means a superannuation agreement within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**184 Subregulation 1.03(1) (subparagraph (c)(ii) of the definition of *transferable benefits*)**

Omit “90MT(2)(b)”, substitute “90XT(2)(b) or 90YY(2)(b) (as the case may be)”.

**185 Paragraphs 1.04(3)(b) and (3A)(a)**

Omit “section 90MD”, substitute “Part VIIIIB or VIIC”.

**186 Subparagraph 2.36C(1)(d)(ii)**

Omit “90MJ(1)(b)(i)”, substitute “90XJ(1)(b)(i) or 90YN(b)(i) (as the case may be)”.

**187 Subparagraph 2.36C(1)(d)(iii)**

Omit “90MT(1)(c)”, substitute “90XT(1)(c) or 90YY(1)(c) (as the case may be)”.

**188 Paragraph 6.17AA(a)**

Omit “90ML(4)”, substitute “90XL(4) or 90YP(4)”.

**189 Paragraph 6.17AA(b)**

Omit “90MU(1)”, substitute “90XU(1) or 90YZ(1)”.

**190 Regulation 6.17AA (note)**

Repeal the note, substitute:

Note 1: Subsections 90XL(4) and 90YP(4) of the *Family Law Act 1975* provide that while a payment flag is operating on a superannuation interest, the trustee must not make any splittable payment to any person in respect of the interest.

Note 2: Subsections 90XU(1) and 90YZ(1) of the *Family Law Act 1975* provide that a court may make an order in relation to a superannuation interest directing the trustee not to make a splittable payment in respect of the interest without the leave of the court.

**191 Paragraph 6.43(2)(b)**

After “VIII B”, insert “or VIII C”.

**192 Subregulation 6.44(1) (note)**

After “VIII B”, insert “or VIII C”.

**193 Paragraph 7A.01(a)**

Omit “Part VIII B”, substitute “Parts VIII B and VIII C”.

**194 Subparagraph 7A.03B(3)(c)(i)**

Omit “90MT(2)(b)”, substitute “90XT(2)(b) or 90YY(2)(b) (as the case may be)”.

**195 Subparagraph 7A.11(2)(c)(ii)**

Omit “90MT(2)(b)”, substitute “90XT(2)(b) or 90YY(2)(b) (as the case may be)”.

**196 Subparagraph 7A.13(2)(c)(ii)**

Omit “90MT(2)(b)”, substitute “90XT(2)(b) or 90YY(2)(b) (as the case may be)”.