



Australian Government
Department of Finance and Deregulation

SUBMISSION TO THE
SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE
INQUIRY INTO THE
JUDGES AND GOVERNORS-GENERAL LEGISLATION
AMENDMENT (FAMILY LAW) BILL 2012

April 2012

Introduction

1. The *Judges and Governors-General Legislation Amendment (Family Law) Bill 2012* (the Bill) amends the *Judges' Pensions Act 1968* (Judges' Act) and the *Governor-General Act 1974* (Governor-General Act).
2. The objective of the Bill is to provide arrangements that will allow a Judge's or Governor-General's superannuation benefit to be split with his or her former spouse following a marital or relationship breakdown, at the time a splitting agreement or splitting order is made.

Purpose

3. The Bill provides for an amount to be calculated and transferred to a former spouse based on the percentage split or specified amount in the splitting agreement or splitting order. The former spouse will be able to receive his or her share of the superannuation benefit as a separate benefit at the time the splitting agreement or splitting order is made. This will provide a clean break of the superannuation benefit.
4. The proposed changes give certainty to both parties in their property settlement negotiations.
5. The proposed changes bring the superannuation splitting arrangements for Judges and Governors-General into line with the arrangements available to members of the other Commonwealth defined benefit superannuation schemes.
6. The *Family Law Act 1975* allows superannuation to be treated as property which can be split by couples following a marital or relationship breakdown. In defined benefit superannuation schemes, the total value of the benefit cannot readily be ascertained¹, particularly before the scheme member's retirement. Accordingly, separate scheme specific superannuation splitting arrangements have been implemented for many schemes.
7. In 2004, the Commonwealth's defined benefit schemes² implemented arrangements like those that are proposed by the Bill for Judges and Governors-General. These arrangements allow the benefit to be valued at the time of property settlement negotiations and, therefore, to be split between the parties following the making of a splitting agreement or splitting order.

¹ In defined benefit schemes, the total benefit is usually calculated at the time the member exits the scheme and is based on certain variables, such as length of service and salary.

² These are the Commonwealth Superannuation Scheme (CSS), Public Sector Superannuation Scheme (PSS), Parliamentary Contributory Superannuation Scheme (PCSS), Defence Forces Retirement Benefits scheme (DFRB), Defence Force Retirement and Death Benefits Scheme (DFRDB) and the Military Superannuation and Benefits Scheme (MSBS).

8. The members of the Commonwealth's defined benefit superannuation schemes can have a clean break of superannuation as for other members of modern accumulation superannuation schemes.
9. Many state public sector defined benefit schemes have also implemented superannuation splitting arrangements that provide a separate benefit at the time a splitting agreement or splitting order is made.
10. The arrangements currently applying under the *Judges' Pensions Act 1968* do not provide for valuation of the Judge's benefit at the time a splitting agreement or splitting order is made and, therefore, the benefit cannot be split between the parties at that time. Payments to a former spouse cannot commence until the Judge retires and cease when the Judge dies.
11. There are currently no provisions under the Governor-General Act that provide for the splitting of superannuation benefits in the event a splitting agreement or splitting order is made.

Operation of the proposed arrangements

12. The Bill will operate where a splitting agreement or splitting order is made against an interest of a Judge or Governor-General in the relevant superannuation scheme. Whether the superannuation benefit is to be split and, if so, in what amount or percentage is a matter for the parties concerned or the court.
13. The Bill requires the value of the Judge's or Governor-General's superannuation benefit to be determined for the purposes of calculating the split of the benefit. This takes account of salary and length of service, and has reference to actuarial factors³ based on the Judge's or Governor-General's gender, his or her age and life expectancy. The value of the Judge's benefit subject to the split will be based on the benefits accrued at this time. The Judge will receive all the benefits accruing after this period.
14. The amount to be transferred to the former spouse, as a separate benefit, is calculated taking into account the percentage or specified amount in the splitting agreement or splitting order.
15. The Judge's or Governor-General's benefit is adjusted by the proportion of the benefit transferred to the former spouse.⁴
16. The Bill includes transitional provisions to make sure the proposed arrangements operate consistently with the superannuation splitting arrangements previously made by the parties at the time of their property settlement.

³ The factors used to calculate the value of the benefit will be set out in delegated legislation.

⁴ For example, if the value of the benefit is \$1,000,000 and the percentage split in the splitting instrument is 40% in favour of the former spouse, the amount to be transferred to the former spouse is \$400,000 and the adjustment to the Judge's pension is a 'transfer factor' of 0.4.