Methodology for Reducing Pension Entitlements of Victorian Judges and Related Officers

Recitals

1. This document sets out a methodology approved by the Attorney-General for the State of Victoria for the reduction of the pension benefit payable to various classes of Victorian judicial officer. Unless the contrary intention appears, all references to legislation refer to the relevant instruments as amended from time to time.

2. This methodology is to be applied to reduce the ongoing pension payments of judicial officers, where an amount has previously been paid to a non-member spouse or de facto partner to enable the relevant pension entitlement to be divided in accordance with the separate interest method under the Family Law Act 1975 (Cth) and Family Law (Superannuation) Regulations 2001 (Cth), in divorce property proceedings.

3. In particular, this methodology is approved –

(a) in the case of Judges of the Supreme Court, under Constitution Act 1975 (Vic) s83(16);

(b) in the case of Associate Judges of the Supreme Court, under Supreme Court Act 1986 (Vic) s104A(10A) and Constitution Act 1975 (Vic) s 83(16);

(c) in the case of Judges of the County Court, under County Court Act 1958 (Vic) s14(15);

(d) in the case of Associate Judges of the County Court, County Court Act 1958 (Vic) ss17B(10A) and 14(15);

(e) in the case of the Chief Magistrate, pursuant to the Magistrates' Court Act 1989 (Vic) s10A and County Court Act 1958 (Vic) s14(15).

Background and use of this methodology

4. In family law proceedings, superannuation and pension entitlements are dealt with under a complex set of Commonwealth and Victorian provisions.

5. In broad outline –

(a) for the defined benefit pension schemes of relevant Victorian judicial officers, the Attorney-General is the trustee of the fund, of which the judicial officer is a member;

(b) orders or agreements under the Family Law Act 1975 (Cth) may redirect a range of superannuation payments (including relevant pension payments from defined benefit schemes), as and when they fall due to a member, to the member’s former partner (Payment Splitting);

(c) the governing rules of a fund may be altered to provide that, where the trustee of the fund is served with a payment splitting order or agreement, the trustee may, instead of splitting ongoing payments, make a one-off
lump sum payment and, through that, discharge any future payment splitting obligations (Interest Splitting);

(d) the governing rules of the County and Supreme Court judicial pension schemes (also encompassing the Chief Magistrate) were amended in 2008 to allow for Interest Splitting;

(e) the governing rules that have been enacted in Victorian legislation provide that following an Interest Splitting payment –

... the benefit of [the retired judicial officer] must be reduced by the Minister in accordance with a methodology approved by the Minister, on the advice of an actuary appointed by the Minister.

6. This methodology was approved by the Attorney-General, on the advice of an actuary appointed by the Attorney-General,\(^1\) and is to be used when –

(a) a lump sum amount has previously been paid to a judicial officer's former partner, following an Interest Splitting arrangement;\(^2\)

(b) the relevant judicial officer is in receipt of a judicial pension.

7. The judicial officer's pension is to be reduced (under one or more of the provisions listed in paragraph 3 above) to take account of the previous lump sum paid.

8. The reduced pension payable to the judicial officer is to be calculated by a two-stage process:

(a) determination of the reduction multiple;

(b) application of the reduction multiple to the relevant pension entitlement.

9. This two-stage process will differ depending on whether the interest split occurred when the pension entitlement was:

(a) in the Growth Phase – i.e. the interest split and payment time (the payment of a lump sum to the former spouse) occurred when the judicial officer was in service and had not yet begun to receive a pension;

(b) in the Payment Phase – i.e. the interest split and payment time (the payment of a lump sum to the former spouse) occurred when the judicial officer had completed their qualifying service period, and had begun to receive a pension.

10. Two-stage processes are provided for each of these circumstances.

\(^1\) Dr David Knox, a Fellow of the Institute of Actuaries of Australia.

\(^2\) Or multiple lump sums have been paid to multiple former partners.
Definitions

In this methodology:

"Growth Phase" means the period from a member's commencement of eligible service in respect of a Superannuation Interest to the time that the member has satisfied relevant statutory criteria and has begun to receive the payment of benefits arising out of the Superannuation Interest.

"Interest Value" is the gross value of the Superannuation Interest at the payment time calculated –

(a) in the case of interests in the Growth Phase at the payment date – under the Valuation Methodology Approval; or

(b) in the case of interests in the Payment Phase at the payment date – under regulation 29 of the Family Law (Superannuation) Regulations 2001 (Cth).

Note for ease of administration of this methodology:– the Interest Value will have been determined at the time of the interest split in order to determine the lump sum payable to the former spouse. There would have been a calculation undertaken, or actuarial advice obtained, at the payment time.

"Payment Time" is the time at which a Separate Interest is to be created in favour of the Non-Member Spouse and is the date for calculation of all values relevant to the benefit reduction.

"Payment Phase" means the period following the Growth Phase.

"Proportion to Spouse" is the amount of the Separate Interest created for the non-member spouse divided by the Interest Value.

Note for ease of administration of this methodology:– where the interest splitting order or agreement specifies a percentage of the interest to be transferred to the former spouse, the Proportion to Spouse will be equal to the percentage payable to the non-member spouse contained in the order or agreement.

"Separate Interest" means an interest splitting transfer or payment of a lump sum in favour of a non-member spouse under Constitution Act 1975 (Vic) s 83(8)-(22), Supreme Court Act 1986 (Vic) s 104A(10A), or County Court Act 1958 (Vic) ss 14(7)-(21) or 17B(10A), or Magistrates' Court Act 1989 (Vic) s 10A(1).

Note for ease of administration of this methodology:– the amount of the Separate Interest will have been determined at the time of the interest split – see the previous calculation undertaken, or actuarial advice obtained, at the payment time.

"Superannuation Interest" means an interest under –

(a) Constitution Act 1975 (Vic) s 83(1),(1A),(1B),(1C),(1D);
(b) Supreme Court Act 1986 (Vic) s 104A(1),(1A); or
(c) County Court Act 1958 (Vic) ss 14(2),(2A),(2B); 17B(1),(1A),(1B); or
(d) Magistrates' Court Act 1989 s 10A.
"Valuation Methodology Approval" means Part 7 of Schedule 3 to the Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003 (Cth). The Valuation Methodology Approval was approved pursuant to regulation 38 of the Family Law (Superannuation) Regulations 2001 (Cth).

1.) Reduction Methodology Part 1: to be applied when the relevant interest was in the Growth Phase at the Payment Time

Calculating the Reduction Multiple

If the benefits were in the growth stage at the payment time, the reduction multiple (RM) is determined as follows:

\[ RM = (ABM \times \text{Proportion to spouse}) \]

Where
- \( ABM \) is the accrued benefit multiple at the payment time, being the lesser of
  - \( 0.6 - FLMR \), and
  - \( 0.6 \times \frac{S}{QS} - FLMR \).
- \( S \) is the period of service in the person's eligible office in years (including a fraction of a year) as defined in clause 4(1) of the Valuation Methodology Approval.
- \( QS \) is qualifying service as defined in clause 8 of the Valuation Methodology Approval.
- \( FLMR \) is the reduction factor under clause 7 of the Valuation Methodology Approval (arising from any previous family law splits).

Applying the RM to the relevant pension entitlement

When a member exits with a pension entitlement:
- An accrued benefit multiple, at the time the judicial officer exits with a pension, is calculated at the exit date. This pension multiple will already have been reduced to allow for prior family law splits\(^3\) (ABME).
- The above calculated RM is deducted from the ABME to result in a revised accrued benefit multiple (RABM).
- The pension payable to the judicial officer is the RABM \( \times \) the relevant judicial salary.

\(^3\) I.e. where there are multiple family law splits in the Growth Phase, the ABME will not have been reduced for the current (or most recent) family law split, but will have been reduced for any prior family law splits.
Pension payable = RABM x relevant judicial salary.

Example

Calculating the RM

At the payment time, a judge was aged 55 with 10 years service (i.e. appointed at age 45) and will be entitled to a pension at age 65. The proportion paid to the spouse was 40%. FLMR is zero. Applying the definition of Qualifying Service in clause 8 of the Valuation Methodology Approval, QS = 20.

RM = (ABM x Proportion to spouse)
   = (((0.6 x S / QS) - FLMR) x Proportion to spouse)
   = (((0.6 x 10 / 20) - 0) x 0.4)
   = (0.3 x 0.4)
   = 0.12

Applying the RM to the relevant pension entitlement

On retirement at age 65, the judge receives a reduced pension. Based on the relevant legislation, having served 20 years, a full pension is payable at the exit date, therefore ABME = 0.6

Pension = RABM x relevant judicial salary
= (ABME - RM) x relevant judicial salary
= (0.6 - RM) x relevant judicial salary
= (0.6 - 0.12) x relevant judicial salary
= 0.48 x relevant judicial salary

Pension payable = 48% of relevant judicial salary.

2.) Reduction Methodology Part 2: to be applied when the interest is in the Payment Phase at the Payment Time

Calculating the RM

If the benefits are in the payment stage at the payment time, the formula for the RM is determined as follows:

RM = PM x Proportion to spouse

Where

- PM is the pension multiple at the payment time being the percentage of the relevant judicial salary payable to the member spouse at that date. This pension multiple will already have been reduced to allow for prior family law splits.
Applying the RM to the relevant pension entitlement

With effect from the payment time, the member’s pension is calculated as follows:

\[ \text{Pension} = (\text{PM} - \text{RM}) \times \text{relevant judicial salary}. \]

**Example**

At the payment time, the member was receiving a full judicial pension (i.e., \(0.6 \times \text{relevant judicial salary}\)). The Proportion to Spouse is 40%.

\[
\text{RM} = (\text{PM} \times \text{Proportion to spouse}) \\
= (0.6 \times 0.4) \\
= 0.24
\]

With effect from the Payment Time, the pension would be determined as follows:

\[
\text{Pension} = (\text{PM} - \text{RM}) \times \text{relevant judicial salary} \\
= (0.6 - 0.24) \times \text{relevant judicial salary} \\
= 0.36 \times \text{relevant judicial salary}
\]