



Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 3)¹

Statutory Rules 2003 No. 171²

I, GUY STEPHEN MONTAGUE GREEN, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Industry (Supervision) Act 1993*.

Dated 25 June 2003

G. S. M. GREEN
Administrator

By His Excellency's Command

HELEN COONAN
Minister for Revenue and Assistant Treasurer

1 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 3)*.

2 Commencement

These Regulations commence on 1 October 2003.

3 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994*.

4 Transitional

The amendments made by Schedule 1 apply to an annuity or a pension with a commencement date on or after 1 October 2003.

Schedule 1 Amendments

(regulation 3)

[1] Paragraph 1.05 (1) (c)

omit

purchased.

insert

purchased; and

[2] After paragraph 1.05 (1) (c)

insert

- (d) for a benefit that arises under a contract that meets the standards of subregulation (4) — the contract also meets the standards of regulation 1.07A; and

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- (e) for a benefit that arises under a contract that meets the standards of subregulation (2), (6), (7) or (9) — the contract also meets the standards of regulation 1.07B; and
 - (f) for a benefit that arises under a contract that meets the standards of subregulation (8):
 - (i) the benefit can be taken to consist of two benefits (*annuities*):
 - (A) an annuity that arises from that part of the contract that provides for payments whose size is not fixed; and
 - (B) an annuity that arises from that part of the contract that provides for payments whose size in a year is fixed; and
 - (ii) the contract meets the standards of regulation 1.07A in relation to the annuity mentioned in sub-subparagraph (i) (A); and
 - (iii) the contract meets the standards of regulation 1.07B in relation to the annuity mentioned in sub-subparagraph (i) (B).

[3] Subparagraph 1.05 (2) (f) (i)

substitute

- (i) if the annuity is not funded from the commutation of another annuity or a pension and the commutation is made within 6 months after the commencement day of the annuity; or

[4] Subparagraph 1.05 (5) (a) (i)

omit

or after 1 April

insert

on or after 1 June

[5] Sub-subparagraph 1.05 (9) (b) (vii) (A)*substitute*

- (A) if the annuity is not funded from the commutation of another annuity or a pension and the commutation is made within 6 months after the commencement day of the annuity; or

[6] Paragraph 1.06 (1) (b)*omit*

pension.

insert

pension; and

[7] After paragraph 1.06 (1) (b)*insert*

- (c) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (4) — the rules also meet the standards of regulation 1.07A; and
- (d) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (2), (6) or (7) — the rules also meet the standards of regulation 1.07B.

[8] Subparagraph 1.06 (2) (e) (i)*substitute*

- (i) if the pension is not funded from the commutation of an annuity or another pension and the commutation is made within 6 months after the commencement day of the pension; or

[9] Subparagraph 1.06 (5) (a) (i)

omit

April

insert

June

[10] Sub-subparagraph 1.06 (7) (b) (vi) (A)

substitute

- (A) if the pension is not funded from the commutation of an annuity or another pension and the commutation is made within 6 months after the commencement day of the pension; or

[11] After regulation 1.07

insert

1.07A Commutation of allocated annuities and pensions

- (1) This regulation applies in relation to the following:
- (a) a contract mentioned in paragraph 1.05 (1) (d) for a benefit (in this regulation called the ***annuity***);
 - (b) a contract mentioned in paragraph 1.05 (1) (f) for a benefit that is an annuity under sub-subparagraph 1.05 (1) (f) (i) (A) (in this regulation called the ***annuity***);
 - (c) rules of a superannuation fund mentioned in paragraph 1.06 (1) (c) for a benefit (in this regulation called the ***pension***).
- (2) The contract or rules, meet the standards of this regulation if the contract or rules ensure that the annuity or pension cannot be commuted, in whole or in part, unless:
- (a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or

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- (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
 - (c) the annuity or pension has paid, in the financial year in which the commutation is to take place, at least the minimum amount under subregulation (3).
- (3) For paragraph (2) (c), the minimum amount is calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

Days in payment period means the number of days in the period that:

- (a) begins on:
 - (i) if the annuity or pension commenced in the financial year in which the commutation is to take place — the commencement day; or
 - (ii) otherwise — 1 July in that financial year; and
- (b) ends on the day on which the commutation is to take place.

Days in financial year means the number of days in the financial year in which the commutation is to take place (365 or 366).

Minimum annual amount for the financial year means:

- (a) for an annuity mentioned in paragraph (1) (b) — the minimum limit worked out in accordance with clause 2 of Schedule 1A as if the annuity account balance was the amount of the annuity account that is allocated by the annuity provider to make payments whose size is not fixed, in accordance with subparagraph 1.05 (8) (c) (ii); and

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- (b) otherwise — the minimum limit worked out in accordance with clause 2 of Schedule 1A;
rounded to the nearest 10 whole dollars.

1.07B Commutation of other annuities and pensions

- (1) This regulation applies in relation to the following:
- (a) a contract mentioned in paragraph 1.05 (1) (e) for a benefit (in this regulation called the ***annuity***);
 - (b) a contract mentioned in paragraph 1.05 (1) (f) for a benefit that is an annuity under sub-subparagraph 1.05 (1) (f) (i) (B) (in this regulation called the ***annuity***);
 - (c) rules of a superannuation fund mentioned in paragraph 1.06 (1) (d) for a benefit (in this regulation called the ***pension***).
- (2) For this regulation, other than for subregulation (5), the ***payment year*** for an annuity or pension means the period of 12 months that begins on the day after:
- (a) the commencement day; or
 - (b) the anniversary of the commencement day.
- (3) The contract or rules, meet the standards of this regulation if the contract or rules ensure that the annuity or pension cannot be commuted, in whole or in part, unless:
- (a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or
 - (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
 - (c) the annuity or pension has paid, in the payment year in which the commutation is to take place, at least the minimum amount under subregulation (4).

- (4) For paragraph (3) (c), the minimum amount is calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in payment year}}$$

where:

Days in payment period means:

- (a) the number of days in the period that:
- (i) begins on:
 - (A) the day after the anniversary of the commencement day that occurs before the day on which the commutation is to take place; or
 - (B) if the annuity or pension commenced on the day before the start of the payment year in which the commutation is to take place — the day after the commencement day; and
 - (ii) ends on the day on which the commutation is to take place; or
- (b) if subregulation (5) applies — 1 day.

Days in payment year means the number of days in the payment year in which the commutation is to take place (365 or 366).

Minimum annual amount means:

- (a) for an annuity mentioned in paragraph (1)(b) — the minimum amount that the annuity would pay as fixed-size payments in the payment year if the annuity were not commuted; and
- (b) otherwise — the minimum amount that the annuity or pension would pay in the payment year if the annuity or pension were not commuted.

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- (5) If the commencement day for an annuity or a pension is the day on which the commutation of the annuity or pension is to take place:
- (a) the payment year is taken to commence on the commencement day and end on the day before the anniversary of the commencement day; and
 - (b) there is taken to be 1 day in the payment period.
- (6) If, to calculate the minimum annual amount, it is necessary to use a future unknown value of the CPI, that value is taken to be equal to the CPI for the last known quarter.

[12] Schedule 1A, clause 4, except the table

substitute

4. An amount determined under the formula in clause 1 or clause 2, is rounded to the nearest 10 whole dollars.

Notes

1. These Regulations amend Statutory Rules 1994 No. 57, as amended by 1994 Nos. 189 and 432; 1995 Nos. 47, 64, 142, 158, 159, 240, 293, 384 and 430; 1996 Nos. 44, 57, 122 and 344; 1997 Nos. 69, 117, 152, 153, 221, 243, 293, 309, 343 and 415; 1998 Nos. 76, 83, 108, 175, 177, 193, 240 and 312; 1999 Nos. 14, 31, 115, 239, 317 and 356; 2000 Nos. 119, 151, 185, 280 and 281; 2001 Nos. 37, 352 and 353; 2002 Nos. 21, 91, 150, 171, 200 and 353; 2003 Nos. 42 and 170.
2. Notified in the *Commonwealth of Australia Gazette* on 2 July 2003.