



Retirement Savings Accounts Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. 147²

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Retirement Savings Accounts Act 1997*.

Dated 24 June 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

HELEN COONAN
Minister for Revenue and Assistant Treasurer

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1 Name of Regulations

These Regulations are the *Retirement Savings Accounts Amendment Regulations 2004 (No. 2)*.

2 Commencement

These Regulations commence as follows:

- (a) on 1 July 2004 — regulations 1 to 3 and Schedule 1;
- (b) on 1 September 2004 — Schedule 2;
- (c) on 20 September 2004 — Schedule 3.

3 Amendment of *Retirement Savings Accounts Regulations 1997*

Schedules 1, 2 and 3 amend the *Retirement Savings Accounts Regulations 1997*.

Schedule 1 Amendments commencing on 1 July 2004

(regulation 3)

[1] Subregulation 1.03 (1), after definition of *capital gains tax exempt component*

insert

child means an individual who is under 18.

[2] Subregulation 1.03 (1), definition of *child contributions*

substitute

child contributions means contributions that are made to an RSA institution in respect of a child, other than:

- (a) contributions made in respect of the child by, or on behalf of, an employer of the child; and
- (b) contributions made by a child in respect of himself or herself.

[3] Paragraph 4.13 (1) (b)

after

receives

insert

, before 1 July 2004,

[4] Subparagraph 4.24 (1) (a) (ii)

omit

on either a full-time or part-time basis;

insert

to at least a part-time equivalent level;

[5] Paragraphs 4.24 (1) (b) and (c)*substitute*

- (b) where the RSA holder:
 - (i) had, on 30 June 2004, reached age 75; and
 - (ii) has not, since 1 July 2004, continued to be gainfully employed for at least 30 hours a week;
- (c) where the RSA holder has reached age 75, and is not a person to whom paragraph (b) applies;
- (d) the RSA holder dies.

[6] Subparagraph 4.24 (2) (a) (ii)*omit*

on either a full-time or part-time basis;

insert

to at least a part-time equivalent level;

[7] Subparagraph 4.24 (2) (b) (ii)*omit***[8] After subregulation 4.24 (5)***insert*

- (6) In this regulation a person is gainfully employed at a part-time equivalent level if the person was gainfully employed for at least 240 hours during the financial year that ended on the last occurring 30 June.

[9] Subregulation 5.03 (1)*substitute*

- (1) Subject to subregulation (5), an RSA institution may accept contributions that are made in respect of an RSA holder who is under age 65.

[10] Subregulation 5.03 (2)

omit

[11] Subregulation 5.03 (2A)

omit

For paragraph (1) (d), an RSA

insert

An RSA

[12] Paragraph 5.03 (3) (b)

substitute

- (b) the RSA holder has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.

[13] Paragraph 5.03 (4) (b)

substitute

- (b) the contributions are made by the RSA holder in respect of the RSA holder and the RSA holder has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.

[14] Subregulation 5.03 (6)

substitute

- (6) In this regulation, a person is gainfully employed on a part-time basis during a financial year if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year.

Schedule 2 Amendments commencing on 1 September 2004

(regulation 3)

- [1] Subregulation 1.03 (1), definitions of *child*, *child account* and *child contributions***

omit

- [2] Part 2A**

omit

- [3] Subregulation 5.03 (2A)**

omit

Schedule 3 Amendments commencing on 20 September 2004

(regulation 3)

- [1] **Subregulation 1.03 (1), after definition of *investment earnings***
insert
life expectancy has the same meaning as *life expectation factor* in section 27H of the Tax Act.
- [2] **Subregulation 1.03 (1), after definition of *mandated employer-financed benefits***
insert
market linked pension means a pension provided under terms and conditions of an RSA that meet the standards of subregulation 1.07 (3A).
- [3] **Subregulation 1.07 (1)**
omit
subregulation (2).
insert
subregulation (2) or (3A).

[4] After subregulation 1.07 (3)*insert*

(3A) Terms and conditions of an RSA that provides a benefit (*the market linked pension*) meet the standards of this subregulation if they at least ensure that:

(a) the market linked pension:

- (i) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day of the pension, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or
- (ii) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or
- (iii) if:
 - (A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary; and
 - (B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and
 - (C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i) or (ii) for the pension;

the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

- (D) the life expectancy of the spouse on the commencement day; or

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- (E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day;
at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse does not consist of a whole number of years; and
- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a payment split) is determined in accordance with Schedule 4; and
- (c) the market linked pension does not have a residual capital value; and
- (d) the terms and conditions of the market linked pension meet the standards of regulation 1.08; and
- (e) the market linked pension cannot be commuted except:
- (i) if the pension:
- (A) is not funded from the commutation of:
- (I) another pension that is provided under terms and conditions that meet the standards of this subregulation; or
- (II) an annuity that is provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
- (III) a pension that is provided under rules that meet the standards of subregulation 1.06 (2), (3), (7) or (8) of the SIS Regulations; and
- (B) if the commutation is made within 6 months after the commencement day of the pension; or

- (ii) subject to subparagraph (iii), on the death of the primary beneficiary or reversionary beneficiary, by payment of:
 - (A) a lump sum or a new pension to one or more dependants of either the primary beneficiary or reversionary beneficiary; or
 - (B) a lump sum to the legal personal representative of either the primary beneficiary or reversionary beneficiary; or
 - (C) if, after making reasonable enquiries, the provider of the pension is unable to find a person mentioned in sub-subparagraph (A) or (B) — a lump sum to another individual; or
- (iii) for subparagraph (ii), if the primary beneficiary has opted, under subparagraph (a) (iii), for a period worked out in relation to the life expectancy of the primary beneficiary's spouse — the market linked pension cannot be commuted until the death of both the primary beneficiary and the spouse; or
- (iv) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of:
 - (A) another pension that is provided under terms and conditions that meet the standards of this subregulation; or
 - (B) an annuity that is provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
 - (C) a pension that is provided under rules that meet the standards of subregulation 1.06 (2), (3), (7) or (8) of the SIS Regulations; or
- (v) to pay a superannuation contributions surcharge; or
- (vi) to give effect to an entitlement of a non-member spouse under a payment split; and
- (f) if the market linked pension reverts, it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and

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- (g) if the market linked pension is commuted, the commutation amount cannot exceed the account balance immediately before the commutation; and
 - (h) the market linked pension can be transferred only:
 - (i) on the death of the primary beneficiary:
 - (A) to 1 of the dependants of the primary beneficiary; or
 - (B) to the legal personal representative of the primary beneficiary; or
 - (ii) on the death of the reversionary beneficiary:
 - (A) to 1 of the dependants of the reversionary beneficiary; or
 - (B) to the legal personal representative of the reversionary beneficiary; and
 - (i) the capital value of the market linked pension, and the income from it, cannot be used as security for a borrowing.
- (3B) Terms and conditions mentioned in subregulation (3A) are not prevented from meeting the standards of that subregulation by reason only that the terms or conditions provide that, if the commencement day of the pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.
- (3C) Despite regulation 9 of the *Income Tax Regulations 1936*, for a pension that has a commencement day on or after 20 September 2004 and on or before 31 December 2004, one of the following life tables are to be used in ascertaining the life expectancy of a person under this regulation:
- (a) the most recently published Australian Life Tables;
 - (b) the *1995-97 Australian Life Tables*.

[5] After regulation 1.07*insert***1.08 Commutation of market linked pension**

- (1) This regulation applies in relation to the terms and conditions of an RSA mentioned in paragraph 1.07 (3A) (d) for a market linked pension.
- (2) The terms and conditions meet the standards of this regulation if they ensure that the pension cannot be commuted, in whole or in part, unless:
 - (a) the commutation results from the death of a pensioner or a 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 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:

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

where:

annual amount for the financial year means the amount worked out in accordance with Schedule 4 for the pension, rounded to the nearest 10 whole dollars.

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

(a) starts on:

(i) if the pension commenced in the financial year in which the commutation is to take place — the commencement day; or

(ii) in any other case — 1 July in that financial year; and

(b) ends at the end of 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.

[6] Paragraph 4A.04 (1) (b)

omit

allocated pension

insert

allocated pension or market linked pension

[7] Paragraph 4A.05 (6A) (b)

omit

allocated pension —

insert

allocated pension or market linked pension —

[8] Paragraph 4A.08 (1) (b)

omit

allocated pension

insert

allocated pension or market linked pension

[9] Subparagraph 4A.15 (1) (b) (ii)*omit*

allocated pension

insert

allocated pension or market linked pension

[10] Paragraph 4A.18 (1) (b)*omit*

allocated pension

insert

allocated pension or market linked pension

[11] Paragraphs 4A.27 (1) (b) and 4A.28 (1) (b)*omit*

allocated pension.

insert

allocated pension or market linked pension.

[12] After Schedule 3*insert***Schedule 4 Payments for market linked pensions**

(paragraph 1.07 (3A) (b))

1. Subject to the following clauses, the total amount of the payments mentioned in paragraph 1.07 (3A) (b) is determined using the formula:

$$\frac{AB}{PF}$$

where:

AB means the amount of the market linked pension account balance:

- (a) on 1 July in the financial year in which the payment is made; or
- (b) if that year is the year in which the pension commences — on the commencement day; and

PF means the payment factor set out in Column 3 in the Table in relation to the item in the Table that represents the term of the pension remaining, expressed in whole years in accordance with clause 5, on:

- (a) 1 July in the financial year in which the payment is made; or
- (b) if that is the year in which the pension commences — the commencement day.

2. Payment of the account balance is sufficient to meet the payment for the financial year if, during the year, the account balance becomes less than the lesser of the following amounts:
 - (a) the amount determined under clause 1;
 - (b) the balance of the amount determined under clause 1 that remains to be paid for the year.

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3. If, in the final year of the pension, after payment of the amount determined under clause 1, there is a residual balance in the account — payment of the account balance must be made within 28 days after:
 - (a) the end of the term or the pension; or
 - (b) if a period is chosen under clause 7 — the end of that period.
 4. An amount determined under the formula in clause 1 is rounded to the nearest 10 whole dollars.
 5. For clause 1, the remaining term of a market linked pension is rounded as follows:
 - (a) if the commencement day of the pension is on or after 1 January in a financial year — rounded up to the nearest whole year;
 - (b) if the commencement day of the pension is on or before 31 December in a financial year — rounded down to the nearest whole year.
 6. If the commencement day of the pension is a day other than 1 July — the appropriate factor set out in Column 3 of the Table must be applied proportionally to the number of days in the financial year that include and follow the commencement day in that financial year.
 7. If, on 1 July in a financial year (*current year*):
 - (a) the payment factor that applies to an account balance for a market linked pension is 1.00; and
 - (b) the payment factor that applied on 1 July in the previous financial year was not 1.00;payments made in respect of the current year and the period after (if any) are taken to be determined in accordance with clause 1 if they comply with the following conditions:
 - (c) payment of the account balance over one of the following periods:
 - (i) if the remaining term of the pension is greater than 12 months — that period;
 - (ii) 12 months;

- (d) if payments are made in accordance with paragraph (c) — the provider has no obligation to make any other payment that, but for this clause, would have been determined on 1 July in the subsequent financial year.

Table

Item	Term of pension remaining rounded in whole years	Payment Factor	Item	Term of pension remaining rounded in whole years	Payment Factor
1	70 or more	26.00	24	47	22.90
2	69	25.91	25	46	22.70
3	68	25.82	26	45	22.50
4	67	25.72	27	44	22.28
5	66	25.62	28	43	22.06
6	65	25.52	29	42	21.83
7	64	25.41	30	41	21.60
8	63	25.30	31	40	21.36
9	62	25.19	32	39	21.10
10	61	25.07	33	38	20.84
11	60	24.94	34	37	20.57
12	59	24.82	35	36	20.29
13	58	24.69	36	35	20.00
14	57	24.55	37	34	19.70
15	56	24.41	38	33	19.39
16	55	24.26	39	32	19.07
17	54	24.11	40	31	18.74
18	53	23.96	41	30	18.39
19	52	23.80	42	29	18.04
20	51	23.63	43	28	17.67
21	50	23.46	44	27	17.29
22	49	23.28	45	26	16.89
23	48	23.09	46	25	16.48

Item	Term of pension remaining rounded in whole years	Payment Factor	Item	Term of pension remaining rounded in whole years	Payment Factor
47	24	16.06	59	12	9.66
48	23	15.62	60	11	9.00
49	22	15.17	61	10	8.32
50	21	14.70	62	9	7.61
51	20	14.21	63	8	6.87
52	19	13.71	64	7	6.11
53	18	13.19	65	6	5.33
54	17	12.65	66	5	4.52
55	16	12.09	67	4	3.67
56	15	11.52	68	3	2.80
57	14	10.92	69	2	1.90
58	13	10.30	70	1 or less	1.00

Notes

1. These Regulations amend Statutory Rules 1997 No. 116, as amended by 1997 Nos. 150, 151, 242, 294, 308 and 342; 1998 Nos. 82, 176, 178 and 192; 1999 Nos. 13 and 315; 2000 No. 279; 2002 Nos. 20, 47, 90, 149, 200 and 352; 2003 Nos. 41 and 195 (disallowed by the Senate on 18 September 2003); 2004 No. 11.
2. Notified in the *Commonwealth of Australia Gazette* on 25 June 2004.