Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4)[1]

Statutory Rules 2004 No. 148[2]

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 *Superannuation Industry (Supervision) Act 1993*.

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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Contents

1 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4)*.

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 *Superannuation Industry (Supervision) Regulations 1994*

Schedules 1, 2 and 3 amend the *Superannuation Industry (Supervision) Regulations 1994*.

Schedule 1 Amendments commencing on 1 July 2004

(regulation 3)

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

substitute

child contributions means contributions that are made to a regulated superannuation fund 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.

[2] Paragraph 6.10 (1) (b)

omit

commencement day;

insert

commencement day, and that were received by the regulated superannuation fund before 1 July 2004;

[3] Paragraph 6.11 (1) (c)

omit

commencement day;

insert

commencement day, and that were received by the approved deposit fund before 1 July 2004;

[4] Subparagraph 6.21 (1) (a) (ii)

omit

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

insert

to at least a part-time equivalent level;

[5] Paragraphs 6.21 (1) (b) and (c)

substitute

(b) the member:

(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) the member has reached age 75, and is not a person to whom paragraph (b) applies;

(d) the member dies.

[6] Subparagraph 6.21 (1A) (a) (ii)

omit

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

insert

to at least a part-time equivalent level;

[7] Subparagraph 6.21 (1A) (b) (ii)

omit

[8] After subregulation 6.21 (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] After subregulation 7.01 (2)

insert

(3) In this Part, 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.

[10] Subregulation 7.04 (1)

substitute

(1) Subject to subregulation (2), a regulated superannuation fund may accept contributions that are made in respect of a member who is under age 65.

[11] Subregulation 7.04 (1A)

omit

[12] Paragraph 7.04 (1B) (b)

substitute

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

[13] Paragraph 7.04 (1C) (b)

substitute

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

[14] Subregulation 7.04 (1E)

omit

For paragraph (1) (e), a regulated

insert

A regulated

[15] Subregulation 7.05 (1)

substitute

(1) Subject to subregulation (2), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who is under age 65.

[16] Subregulation 7.05 (1A)

omit

[17] Paragraph 7.05 (1B) (b)

substitute

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

[18] Paragraph 7.05 (1C) (b)

substitute

(b) the accrual is attributable to contributions made by the member in respect of the member (other than contributions made by the employer that are not mandated employer contributions) and the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.

Schedule 2 Amendments commencing on 1 September 2004

(regulation 3)

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

omit

[2] Part 4A

omit

[3] Subregulation 7.04 (1E)

omit

Schedule 3 Amendments commencing on 20 September 2004

(regulation 3)

[1] Subregulation 1.03 (1), after definition of *lost RSA holder*

insert

market linked annuity means an annuity provided under a contract that meets the standards of subregulation 1.05 (10).

market linked income stream means an annuity provided under a contract that meets the standards of subregulation 1.05 (10), or a pension paid under rules that meet the standards or subregulation 1.06 (8).

market linked pension means a pension paid under rules that meet the standards of subregulation 1.06 (8).

[2] Subregulation 1.03 (1), definition of *transferable benefits*, subparagraph (c) (i)

omit

in respect of an accumulation interest

insert

in respect of an accumulation interest in the growth phase

[3] Paragraph 1.05 (1) (a)

omit

(8) or (9);

insert

(8), (9) or (10);

[4] Subparagraph 1.05 (1) (f) (iii)

omit

sub-subparagraph (i) (B).

insert

sub-subparagraph (i) (B); and

[5] After paragraph 1.05 (1) (f)

insert

(g) for a benefit that arises under a contract that meets the standards of subregulation (10), and has a commencement day on or after 20 September 2004 — the contract also meets the standards of regulation 1.07C.

[6] Subparagraph 1.05 (2) (f) (ii)

substitute

(ii) if the commutation is made to the benefit of a reversionary beneficiary on the death of the primary beneficiary — within one of the following periods after the commencement day of the annuity:

(A) if the primary beneficiary's life expectancy on the commencement day is a period less than 20 years — that period;

(B) in any other case — 20 years; or

[7] Paragraph 1.05 (3) (a)

omit

10 years after the commencement day of the annuity,

insert

the period used for subparagraph (2) (f) (ii),

[8] Paragraph 1.05 (3) (a)

omit

the period of 10 years;

insert

the period;

[9] Paragraph 1.05 (3) (b)

omit

10 years after the commencement day of the annuity

insert

the period used for subparagraph (2) (f) (ii)

[10] Paragraph 1.05 (3) (b)

omit

period of 10 years,

insert

period,

[11] Paragraph 1.05 (3) (c)

omit

10 years after the commencement day of the annuity

insert

the period used for subparagraph (2) (f) (ii)

[12] Subregulation 1.05 (9)

substitute

(9) A contract for the provision of a benefit (in this subregulation called ***the annuity***) meets the standards of this subregulation if the contract ensures that:

(a) for an annuity that has a commencement day before 20 September 2004:

(i) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years — the annuity 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, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

(ii) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more — the annuity is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; and

(b) for an annuity that has a commencement day on or after 20 September 2004:

(i) the annuity 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, 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) the annuity 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 annuity is an annuity 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 annuity;

the annuity 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

(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

(c) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the benefit was purchased; and

(d) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the ***previous total***), and does not exceed the previous total:

(i) if CPI_c is less than or equal to 4% — by more than 5% of the previous total; or

(ii) if CPI_c is more than 4% — by more than CPI_c + 1%;

where:

CPI_c is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;

and

(e) the total amount of the payments to be made in a year in accordance with paragraph (c) or (d) may be varied only to allow commutation to pay a superannuation contributions surcharge; and

(f) the amount paid as the purchase price is wholly converted into annuity income; and

(g) the annuity does not have a residual capital value; and

(h) the annuity cannot be commuted except:

(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

(ii) subject to subparagraph (iv), by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or

(iii) subject to subparagraph (iv), by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or

(iv) for subparagraphs (ii) and (iii), if the primary beneficiary has opted, under subparagraph (b) (iii), for a period worked out in relation to the life expectancy of the primary beneficiary's spouse — the annuity cannot be commuted until the death of both the primary beneficiary and the spouse; or

(v) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation (2), (3) or (10) or this subregulation; or

(B) a pension that is provided under rules that meet the standards of subregulation 1.06 (2), (3), (7) or (8); or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; or

(vi) to pay a superannuation contributions surcharge; and

(i) if the annuity reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and

(j) if the annuity is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and

(k) the annuity cannot be transferred to a person except:

(i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or

(ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and

(l) the capital value of the annuity, and the income from it, cannot be used as security for a borrowing.

[13] After subregulation 1.05 (9)

insert

(10) A contract for the provision of a benefit (***market linked annuity***) meets the standards of this subregulation if the contract ensures that:

(a) the market linked annuity:

(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 annuity, 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 annuity is an annuity 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 annuity;

the annuity 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

(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 (not taking commuted amounts into account) is determined in accordance with Schedule 6; and

(c) the market linked annuity does not have a residual capital value; and

(d) the market linked annuity cannot be commuted except:

(i) if:

(A) the annuity is not funded from the commutation of:

(I) another annuity that is provided under a contract that meets the standards of subregulation 1.05 (2), (3) or (9) or this subregulation; or

(II) a pension that is provided under rules that meet the standards of subregulation 1.06 (2), (3), (7) or (8); or

(III) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; and

(B) the commutation is made within 6 months after the commencement day of the annuity; 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 annuity 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 annuity 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 annuity 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 another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation 1.05 (2), (3) or (9) or this subregulation; or

(B) a pension that is provided under rules that meet the standards of subregulation 1.06 (2), (3), (7) or (8); or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; or

(v) to pay a superannuation contributions surcharge; and

(e) if the market linked annuity reverts, it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and

(f) if the market linked annuity is commuted, the commutation amount cannot exceed the account balance immediately before the commutation; and

(g) the market linked annuity 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

(h) the capital value of the market linked annuity, and the income from it, cannot be used as security for a borrowing.

(11) A contract mentioned in subregulation (10) is not prevented from meeting the standards of that subregulation by reason only that the contract provides that, if the commencement day of the annuity is on or after 1 June in a financial year, no payment is required to be made for that financial year.

(12) Despite regulation 9 of the *Income Tax Regulations 1936*, for an annuity 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*.

[14] Paragraph 1.06 (1) (a)

omit

(6) or (7);

insert

(6), (7) or (8);

[15] Paragraph 1.06 (1) (d)

omit

regulation 1.07B.

insert

regulation 1.07B; and

[16] After paragraph 1.06 (1) (d)

insert

(e) for a benefit that is provided under the rules of a superannuation fund that meet the standards of subregulation (8), and has a commencement day on or after 20 September 2004 — the rules also meet the standards of regulation 1.07C.

[17] Subparagraph 1.06 (2) (e) (ii)

substitute

(ii) if the commutation is made to the benefit of a reversionary beneficiary on the death of the primary beneficiary — within one of the following periods after the commencement day of the pension:

(A) if the primary beneficiary's life expectancy on the commencement day is a period less than 20 years — that period;

(B) in any other case — 20 years; or

[18] Paragraph 1.06 (3) (a)

omit

10 years after the commencement day of the pension,

insert

the period used for subparagraph (2) (e) (ii),

[19] Paragraph 1.06 (3) (a)

omit

the period of 10 years;

insert

the period;

[20] Paragraph 1.06 (3) (b)

omit

10 years after the commencement day of the pension

insert

the period used for subparagraph (2) (e) (ii)

[21] Paragraph 1.06 (3) (b)

omit

period of 10 years,

insert

period,

[22] Paragraph 1.06 (3) (c)

omit

10 years after the commencement day of the pension

insert

the period used for subparagraph (2) (e) (ii)

[23] Subregulation 1.06 (7)

substitute

(7) Rules meet the standards of this subregulation if the rules ensure that:

(a) for a pension that has a commencement day before 20 September 2004:

(i) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years — the pension 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, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

(ii) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more — the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; and

(b) for a pension that has a commencement day on or after 20 September 2004:

(i) the pension 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, 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) the pension 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

(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

(c) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the primary beneficiary became entitled to the pension; and

(d) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the ***previous total***), and does not exceed the previous total:

(i) if CPI_c is less than or equal to 4% — by more than 5% of the previous total; or

(ii) if CPI_c is more than 4% — by more than CPI_c + 1%;

where:

CPI_c is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;

and

(e) the total amount of the payments to be made in a year in accordance with paragraph (c) or (d) may be varied only:

(i) to allow commutation to pay a superannuation contributions surcharge; or

(ii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and

(f) the pension does not have a residual capital value; and

(g) the pension cannot be commuted except:

(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

(ii) subject to subparagraph (iv), by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or

(iii) subject to subparagraph (iv), by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or

(iv) for subparagraphs (ii) and (iii), if the primary beneficiary has opted, under subparagraph (b) (iii), for a period worked out in relation to the life expectancy of the primary beneficiary's spouse — the pension cannot be commuted until the death of both the primary beneficiary and the spouse; or

(v) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation (2), (3) (9) or (10); or

(B) a pension that is provided under rules that meet the standards of subregulation 1.06 (2), (3) or (8) or this subregulation; or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; or

(vi) to pay a superannuation contributions surcharge; or

(vii) to give effect to an entitlement of a non-member spouse under a payment split; and

(h) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and

(i) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and

(j) the pension cannot be transferred to a person except:

(i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or

(ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and

(k) the capital value of the pension, and the income from it, cannot be used as security for a borrowing.

[24] After subregulation 1.06 (7)

insert

(8) Rules that provide a benefit (the ***market linked pension***) meet the standards of this subregulation if the rules 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

(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 6; and

(c) the market linked pension does not have a residual capital value; and

(d) the market linked pension cannot be commuted except:

(i) if the pension:

(A) is not funded from the commutation of:

(I) an annuity that is provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10); or

(II) another pension that is provided under rules that meet the standards of this subregulation, or subregulation 1.06 (2), (3) or (7); or

(III) another pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; and

(B) 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 another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10); or

(B) a pension that is provided under rules that meet the standards of this subregulation, or subregulation 1.06 (2), (3) or (7); or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA 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

(e) 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

(f) if the market linked pension is commuted — the commutation amount cannot exceed the account balance immediately before the commutation; and

(g) 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

(h) the capital value of the market linked pension, and the income from it, cannot be used as security for a borrowing.

(9) Rules mentioned in subregulation (8) are not prevented from meeting the standards of that subregulation by reason only that the rules 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.

(10) 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*.

[25] After regulation 1.07B

insert in Division 1A.1

1.07C Commutation of market linked income stream

(1) This regulation applies in relation to the following:

(a) a contract mentioned in paragraph 1.05 (1) (g) for a market linked annuity;

(b) rules of a superannuation fund mentioned in paragraph 1.06 (1) (e) for a market linked 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

(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:

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

where:

annual amount for the financial year means the amount worked out in accordance with Schedule 6 for the annuity or 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 annuity or 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.

[26] Paragraph 7A.03A (1) (b)

omit

allocated pension

insert

allocated pension or market linked pension

[27] Subparagraph 7A.03B (3) (c) (ii)

omit

in respect of an accumulation interest,

insert

in respect of an accumulation interest in the growth phase,

[28] Paragraph 7A.03B (6A) (b)

omit

allocated pension —

insert

allocated pension or market linked pension —

[29] Subparagraph 7A.03E (b) (i)

omit

allocated pension;

insert

allocated pension or market linked pension;

[30] Subparagraph 7A.04 (1) (b) (ii)

omit

allocated pension

insert

allocated pension or market linked pension

[31] Paragraph 7A.07 (1) (b)

omit

allocated pension

insert

allocated pension or market linked pension

[32] Subparagraph 7A.11 (2) (c) (i)

omit

in respect of an accumulation interest

insert

in respect of an accumulation interest in the growth phase

[33] Subparagraph 7A.13 (2) (c) (i)

omit

in respect of an accumulation interest

insert

in respect of an accumulation interest in the growth phase

[34] Paragraph 7A.16 (1) (b)

omit

allocated pension.

insert

allocated pension or market linked pension.

[35] Subregulation 7A.16 (4)

omit

or an allocated pension

insert

, an allocated pension or a market linked pension

[36] Paragraph 7A.17 (1) (b)

omit

allocated pension

insert

allocated pension or market linked pension

[37] Paragraph 7A.18 (1) (b)

omit

allocated pension.

insert

allocated pension or market linked pension.

[38] Paragraph 9.04E (b)

substitute

(b) an allocated pension; or

(c) a market linked pension.

[39] After Schedule 5

insert

Schedule 6 Payments for market linked income streams

(subregulations 1.05 (10) and 1.06 (8))

1. Subject to the following clauses, the total amount of the payments mentioned in paragraph 1.05 (10) (b) or 1.06 (8) (b) is determined using the formula:

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

where:

AB means the amount of the market linked annuity account balance, or market linked pension account balance, as the case requires:

(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 market linked annuity or pension commences — on the commencement day.

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 market linked annuity or 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 annuity or 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.

3. If, in the final year of the annuity or 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 annuity or 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 annuity or pension is rounded as follows:

(a) if the commencement day of the market linked annuity or 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 market linked annuity or 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 or annuity 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 annuity or 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 annuity or 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 annuity or pension remaining rounded in whole years	Payment Factor	Item	Term of annuity or 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 annuity or pension remaining rounded in whole years	Payment Factor	Item	Term of annuity or 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 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, 170, 171, 196 (disallowed by the Senate on 18 September 2003) and 251; 2004 Nos. 12, 84 and 113.
2. Notified in the *Commonwealth of Australia Gazette* on 25 June 2004.