



Treasury Laws Amendment (Legacy Retirement Product Commutations and Reserves) Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 5 December 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Stephen Jones
Assistant Treasurer
Minister for Financial Services

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1 Name

This instrument is the *Treasury Laws Amendment (Legacy Retirement Product Commutations and Reserves) Regulations 2024*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	7 December 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Income Tax Assessment Act 1997*;
- (b) the *Retirement Savings Accounts Act 1997*;
- (c) the *Superannuation Industry (Supervision) Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Commutation of certain pensions and annuities

Retirement Savings Accounts Regulations 1997

1 After subparagraph 1.07(3A)(e)(iv)

Insert:

(iva) if regulation 1.08AA applies to the commutation; or

2 After regulation 1.08

Insert:

1.08AA Commutation of market linked pension—limited period for full commutation

For the purposes of subparagraph 1.07A(3A)(e)(iva), this regulation applies to a commutation of a benefit if:

- (a) the commutation occurs during the 5 years beginning on the day this regulation commences; and
- (b) the whole of the benefit is commuted.

Superannuation Industry (Supervision) Regulations 1994

3 After subparagraph 1.05(2)(f)(iii)

Insert:

(iiia) subregulations 1.05AA(1) and (2) apply to the commutation;

4 After subparagraph 1.05(9)(h)(v)

Insert:

(via) subregulation 1.05AA(1) applies to the commutation;

5 After subparagraph 1.05(10)(d)(iv)

Insert:

(iva) subregulation 1.05AA(1) applies to the commutation;

6 After regulation 1.05

Insert:

1.05AA Limited period for full commutation of certain annuities

- (1) For the purposes of subparagraphs 1.05(2)(f)(iiia), (9)(h)(via) and (10)(d)(iva), this subregulation applies to a commutation of a benefit if:
 - (a) the commutation occurs during the 5 years beginning on the day this regulation commences; and
 - (b) the whole of the benefit is commuted.

- (2) For the purposes of subparagraph 1.05(2)(f)(iia), this subregulation applies to a commutation of a benefit if the superannuation fund that purchases the benefit or provides the consideration for the benefit:
- (a) is not a defined benefit fund; or
 - (b) is a self managed superannuation fund; or
 - (c) was, when the benefit commenced to be paid and at all earlier times, a small APRA fund (within the meaning of the *Corporations Act 2001*).

7 After subparagraph 1.06(2)(e)(iii)

Insert:

(iia) subregulations 1.06C(1) and (2) apply to the commutation;

8 After subparagraph 1.06(7)(g)(v)

Insert:

(va) subregulation 1.06C(1) applies to the commutation;

9 After subparagraph 1.06(8)(d)(iv)

Insert:

(iva) subregulation 1.06C(1) applies to the commutation;

10 After regulation 1.06B

Insert:

1.06C Limited period for full commutation of certain income streams

- (1) For the purposes of subparagraphs 1.06(2)(e)(iia), (7)(g)(va) and (8)(d)(iva), this subregulation applies to a commutation of a benefit if:
- (a) the benefit is commuted during the 5 years beginning on the day this regulation commences; and
 - (b) the whole of the benefit is commuted.
- (2) For the purposes of subparagraph 1.06(2)(e)(iia), this subregulation applies to a commutation of a benefit if the fund providing the benefit:
- (a) is not a defined benefit fund; or
 - (b) is a self managed superannuation fund; or
 - (c) was, when the benefit commenced to be paid and at all earlier times, a small APRA fund (within the meaning of the *Corporations Act 2001*).

Part 2—Allocations from reserves

Income Tax Assessment (1997 Act) Regulations 2021

11 Subsection 291-25.01(2) (heading)

Repeal the heading.

12 Subsections 291-25.01(3) to (5)

Repeal the subsections.

13 At the end of subsection 292-90.01(1) (before the note)

Add “for you for a financial year”.

14 Subsection 292-90.01(1) (note)

Omit “an individual’s”, substitute “your”.

15 Before subsection 292-90.01(2)

Insert:

Conditions—general

16 Subsection 292-90.01(2)

Omit “The conditions”, substitute “Subject to subsection (2A), the conditions”.

17 After subsection 292-90.01(2)

Insert:

Conditions for allocations from reserves

(2A) If:

- (a) the amount is allocated from a reserve; and
- (b) the amount is not allocated in accordance with the conditions specified in subsection (2);

the conditions are that:

- (c) section 292-90.02 does not apply in relation to the allocation; and
- (d) the amount is not covered by subsection (3) of this section; and
- (e) the amount is not allocated in accordance with the conditions specified in subsection 291-25.01(2); and
- (f) the amount is not an amount mentioned in subsection 99G(6) of the *Superannuation Industry (Supervision) Act 1993* that is refunded in accordance with that subsection.

Excluded contributions and payments

18 Paragraph 292-90.01(3)(g)

Omit “the member”, substitute “you”.

19 At the end of Subdivision 292-C

Add:

292-90.02 Allocations from reserves—allocations that aren't included in your non-concessional contributions

- (1) For the purposes of paragraph 292-90.01(2A)(c), this section applies in relation to the allocation of an amount in a complying superannuation plan for you for a financial year from a reserve if any of subsections (2) to (6) of this section applies.

Note: The result of this section applying in relation to an allocation is that the allocation does not satisfy the condition in subsection 292-90.01(2A) for inclusion in your non-concessional contributions for a financial year.

- (2) This subsection applies if:
- (a) the allocation of the amount for you is part of the allocation, in a fair and reasonable manner, of amounts to accounts for:
 - (i) every member of the complying superannuation plan; or
 - (ii) if you are member of a class of members of the complying superannuation plan, and the reserve relates only to that class of members—every member of the class; and
 - (b) the total amount that is allocated for you for the financial year as part of allocations to which paragraph (a) applies is less than 5% of the value of your interest in the complying superannuation plan at the time of allocation; and
 - (c) the amount would not be assessable income of the complying superannuation plan if it were made as a contribution.
- (3) This subsection applies if:
- (a) the reserve is a pension reserve of the complying superannuation plan; and
 - (b) the amount is allocated from the reserve for you to satisfy a pension liability; and
 - (c) that liability is paid during the financial year.
- (4) This subsection applies if:
- (a) the reserve is a pension reserve of the complying superannuation plan; and
 - (b) the reserve is used to discharge all or part of a liability of the plan to pay a superannuation income stream benefit from a superannuation income stream of which you are the recipient; and
 - (c) the superannuation income stream is commuted or ceases; and
 - (d) the commutation or cessation is not a result of the death of the primary beneficiary; and
 - (e) the amount is allocated from the reserve for you as a result of you having been (before the commutation or cessation) the recipient of the superannuation income stream; and
 - (f) if the reserve relates to more than one superannuation income stream—the allocation is fair and reasonable having regard to:
 - (i) for each superannuation income stream that has not been commuted or ceased—the value of the interest that supports the superannuation income stream; and

- (ii) for each superannuation income stream that has been commuted or ceased—the value of the interest, that supported the superannuation income stream, immediately before the superannuation income stream was commuted or ceased.
- (5) This subsection applies if:
- (a) the reserve is a pension reserve of the complying superannuation plan; and
 - (b) the amount is allocated from the reserve for you as a result of the commutation of a superannuation income stream; and
 - (c) the commutation is a result of the death of the primary beneficiary; and
 - (d) you are a death benefits dependant of the primary beneficiary; and
 - (e) the amount is allocated from the reserve for you:
 - (i) to discharge liabilities of the plan in respect of a superannuation income stream benefit that is payable by the plan as a result of the death of the primary beneficiary; and
 - (ii) as soon as practicable on or after the commutation.
- (6) This subsection applies if:
- (a) the reserve is a pension reserve of the complying superannuation plan; and
 - (b) the amount is allocated from the reserve for you as a result of the commutation of a superannuation income stream; and
 - (c) the commutation is a result of the death of the primary beneficiary; and
 - (d) as soon as practicable on or after the commutation, the amount is:
 - (i) allocated for you; and
 - (ii) paid as a superannuation lump sum and a superannuation death benefit.

Meaning of pension reserve

- (7) A reserve is a ***pension reserve*** of a complying superannuation plan at a particular time if the reserve is used at that time solely for the purpose (the ***pension liability purpose***) of enabling the plan to discharge all or part its pension liabilities (contingent or not) as soon as they become due.
- (8) To avoid doubt, for the purposes of subsection (7), if:
- (a) a reserve of a complying superannuation plan is used for the purpose of enabling the plan to discharge all or part of a liability of the plan to pay a superannuation income stream benefit from a superannuation income stream; and
 - (b) the superannuation income stream is commuted or otherwise ceases; and
 - (c) an amount is allocated from the reserve for a person as a result of the person having been (before the commutation or cessation) the recipient of the superannuation income stream; and
 - (d) immediately before the commutation or cessation, the reserve was a pension reserve;
- the allocation is taken to be a use of the reserve for the pension liability purpose.

20 Section 995-1.01

Insert:

pension liability of a complying superannuation plan means a liability of the plan to pay a superannuation income stream benefit.

pension reserve has the meaning given by subsection 292-90.02(7).

21 In the appropriate position in Chapter 7

Insert:

Part 1000-7—Transitional matters relating to the Treasury Laws Amendment (Legacy Retirement Product Commutations and Reserves) Regulations 2024

1000-7.01 Transitional provision—pension reserves

- (1) This section applies to working out, for the purposes of subsection 292-90.02(4), whether a reserve of a complying superannuation plan is a pension reserve at a time occurring on or after the commencement of this section.
- (2) If, before that commencement:
 - (a) the reserve was used for the purpose of enabling the plan to discharge all or part of a liability of the plan to pay a superannuation income stream benefit from a superannuation income stream; and
 - (b) the superannuation income stream was commuted or otherwise ceased; and
 - (c) after the commutation or cessation, an amount was allocated from the reserve for a person; and
 - (d) immediately before the commutation or cessation, the reserve was a pension reserve;disregard the allocation.