


# ***CR 2025/1 - AFL Players' Association Limited - employment termination payment***

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Status: **legally binding**

## Class Ruling

# AFL Players' Association Limited – employment termination payment

### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the income tax and fringe benefits tax (FBT) consequences of payments from the Player Retirement Account (PRA) received by Australian Football League (AFL) players who are members of the AFL Players' Association Limited (AFLPA).
2. Details of this scheme are set out in paragraphs 10 to 39 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - are an AFL player that is a member of the AFLPA (Member), and
  - receive a payment mentioned under this scheme.

### **When this Ruling applies**

5. This Ruling applies from 1 November 2024 to 31 December 2027.

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## **Ruling**

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6. A payment made by the AFLPA from the PRA to a Member, within 12 months of the termination of their employment through retirement (initial payment), will be an employment termination payment under section 82-130.
7. A payment made by the AFLPA from the PRA to a Member, more than 12 months after the termination of their employment (periodic payment), will not be an employment termination payment under section 82-130. The payment will be assessable income of the Member under section 83-295.
8. A payment made by the AFLPA from the PRA to a Member where the payment is an employment termination payment will not be classified as a fringe benefit under paragraph 136(1)(lc) of the *Fringe Benefits Tax Assessment Act 1997* (FBTAA).
9. A payment made by the AFLPA from the PRA to a Member where the payment is not an employment termination payment apart from paragraph 82-130(1)(b) will also not be classified as a fringe benefit under paragraph 136(1)(lc) of the FBTAA.

## **Scheme**

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10. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.
11. The AFL is the controlling body of the AFL Competition and Australian Football League Women's (AFLW) Competition. As the controlling body, it has the power to bind the Clubs in accordance with the 2023–2027 AFL and AFLW Collective Bargaining Agreement (CBA).
12. There are currently 18 AFL clubs within the AFL and AFLW Competitions. Each AFL Club maintains a list of its players. Each player on the list of an AFL club has entered into an AFL Standard Playing Contract with that AFL club.
13. The AFLPA is the representative body for players participating in the AFL Competition and AFLW Competition.
14. The AFLPA owns and administers the PRA which has been set up to assist Members transition from playing to their post-retirement endeavours.
15. The PRA provides a funding framework to ensure that amounts will be available at the end of a Member's playing career. Funding of the PRA is sourced from membership subscriptions and from the AFL.
16. The AFL allocates an annual contribution in February each year for the benefit of the AFLPA.
17. The AFLPA has established internal rules to determine when a Member would be entitled to payment upon the Member's retirement from the AFL Competition. The payment will be made to a Member after the various opportunities for a Member to be re-employed in the AFL in the year following the Member's retirement to ensure the Member does not re-enter the AFL Competition following their retirement.
18. Due to the dates of the various AFL drafts held in each year, the lump sum payment is made to the Member in July following the date the Member retires from the AFL Competition.

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19. When the Member is ultimately delisted from an AFL Club List and not re-employed in the AFL system, the balance that has accrued in the PRA for their future benefit (that is, annual contributions plus any associated accumulated net investment earnings) will be paid out in accordance with the AFLPA Player Retirement Account Regulations (Regulations), effective 1 November 2024 (as discussed at paragraph 36 of this Ruling).

20. The following documents are relevant for the purposes of the Scheme.

- CBA
- Constitution of AFL Players' Association Limited 2022 (Constitution)
- Regulations.

### **2023–2027 AFL and AFLW Collective Bargaining Agreement**

21. The AFL and the AFLPA have negotiated a 2023–2027 AFL and AFLW CBA.

22. Clause 1.1 of the CBA defines the following:

- **AFL** means the Australian Football League ACN 004 155 211.
- **AFL Competition** means the premier men's Australian football competitions conducted by AFL and includes the AFL Pre-Season Competition or AFL Practice Matches (if held), the AFL Premiership Season and the AFL Finals Series.
- **AFLW or AFLW Competition** means the premier women's Australian Football competition conducted and includes the AFLW Premiership Season and the AFLW Finals Series.
- **Club** means a club licensed by the AFL to field a team in the AFL or AFLW Competitions, including any new clubs.
- **AFLPA** means the AFL Players' Association Limited ACN 662 842 033.
- **AFL Player** means a Player of Australian Football who is or becomes contracted with an AFL Club or who is or becomes listed with the AFL as a Player within an AFL Club and specifically excludes International Scholarship players as that term is defined in the AFL Rules.
- **AFLW Player** means a Player of Australian Football who is or becomes contracted with an AFLW Club or who becomes listed with the AFL as a Player with an AFLW Club.

23. Clause 6.2 of the CBA states:

#### **AFL Player Retirement Account**

- (a) AFL has agreed with AFLPA to assist AFL Players' transition to retirement from playing in the AFL Competition and by making contributions to the AFL Player Retirement Account, which will be administered by AFLPA for those purposes.
- (b) AFL will pay AFLPA the amount set out in item 11 of schedule 2A in each year of the Term.

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**Constitution of AFL Players' Association Limited 2022**

24. Rule 2(g) of the Constitution states that the objects and purposes of the AFLPA are to:

... administer and deal with the funds of the AFLPA as deemed appropriate from time to time, including under any player retirement scheme or hardship fund or similar ancillary fund or scheme established by or on behalf of the AFLPA and for the benefit of Members.

25. Rule 5.1 of the Constitution states:

**Classes of membership and transitional recognition**

The classes of membership are as follows:

- (a) Player Members;
- (b) Past Player Members;
- (c) Life Members; and
- (d) any other class of membership as the Board may from time to time determine under Rule 5.5.

...

26. 'Player Members' are defined in rule 5.2 of the Constitution as:

- (a) The Members in the Player Member class are those persons who are both:
  - (1) eligible to be admitted as a Player Member under rule 5.2(b); and
  - (2) admitted to this class under rule 5.6, and who remain Members in this class.
- (b) A person is eligible to be admitted as a Player Member if the person:
  - (1) is registered with a Club;
  - (2) has completed, and lodged with the AFLPA, an application for membership in the form determined by the directors from time to time under rule 5.6(a)(1);
  - (3) has signed, and lodged with the AFLPA, an authority for the AFLPA to deduct from payments owing to the individual from a Club, or has otherwise made arrangements for payment of, any fees that are payable under rule 5.10; and
  - (4) satisfies any other criteria determined by the directors from time to time.

27. 'Past Player Members' are described in rule 5.3 of the Constitution as:

- (a) The Members in the Past Player Member class are those persons who are both:
  - (1) eligible to be admitted as a Past Player Member under rule 5.3(b); and
  - (2) admitted to this class under rule 5.6, and who remain Members in this class.
- (b) A person is eligible to be admitted as a Past Player Member if the person:
  - (1) is a Past Player;
  - (2) has completed, and lodged with the AFLPA, an application for membership in the form determined by the directors from time to time under rule 5.6(a)(1);
  - (3) has paid, or has otherwise made arrangements for payment of, any fees that are payable under rule 5.10; and

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- (4) satisfies any other criteria determine by the directors from time to time.
- (c) A Past Player Member may attend, but will not be entitled to vote at, a general meeting and will not be entitled to nominate a person for election as a director under rule 8.2, but may be appointed as a director under rule 8.3.
28. Other categories of membership and the admission of new members are detailed in rules 5.4 to 5.6 of the Constitution respectively.
29. Rule 5.7 of the Constitution discusses the cessation of Membership and the removal of a Member's name from the register.

### **AFLPA Player Retirement Account Regulations**

30. The Regulations state that the PRA remains the absolute property of the AFLPA and no member holds any right or beneficial interest in any of the funds held in the PRA unless they have been paid in accordance with the Regulations.
31. For the purposes of the Regulations:
- Retirement** means that a Member has been delisted from the List of an AFL Club and not otherwise listed with that Club and is not selected at the next National Draft Selection Meeting, Pre-Season Draft Selection Meeting, Pre-Season Supplemental Selection Period, or Rookie Draft Selection Meeting ...
32. A Member is deemed to have retired as an AFL Player if the Member's playing contract with an AFL Club has been terminated but they remain on the List of that Club. A member is also deemed to be retired if they remain on the List but are not available for selection for reasons other than illness or injury.
33. Members are responsible for the payment of income tax or any other tax payable in respect of any Retirement Benefit received from the PRA.
34. The AFLPA will withhold and remit tax from any retirement benefit where there is a statutory obligation to do so.
35. The calculation of the retirement benefit is discussed at item 1.1 of schedule 1 to the Regulations. It states:
- Subject to the provisions of the Regulations and a determination by the PRA Committee, a Member shall be paid an amount as a Retirement Benefit from a Retirement Account after their Retirement. The Retirement Benefit shall comprise the total of the amounts accounted for in a Member's account for each AFL Season the Member has been on the List of an AFL Club as adjusted by the investment performance of these funds as determined in accordance with item 2.5 of this schedule 1.
36. Item 2 of schedule 1 to the Regulations discusses the Retirement benefit:
- 2.1 For the purposes of this item 2 of schedule 1, the reference to the year a player is classified as shall, unless the Retirement Committee otherwise determines, mean the number of years the player has been on the List of an AFL Club/s.
- 2.2 The Board will determine the amount to be paid as a Retirement Benefit based on the notional allocations made pursuant to this item. No such notional allocation gives rise to an immediate right to payment nor any obligation to make such a payment, nor any fiduciary duty on the part of the Board in relation to the AFLPA's funds.
- 2.3 An amount notionally accounted for as an anticipated future benefit to be paid to a Member on Retirement may be recorded in an account for each Member (**Member's Account**). The amount notionally allocated each year will be determined after completion of an AFL Season in the relevant Player Service Category, based on any matters the Board considers relevant including but not limited to AFL funding to the AFLPA for the Retirement

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Account in accordance with the CBA. The Board shall inform the Retirement Committee the amount to be notionally allocated to each Member's Account in a timely manner. No Member shall have any interest in the amount recorded in such a Member's account.

...

2.7 Subject to these regulations, the following provisions shall apply to payment of the Member's Retirement Benefit determined in accordance with the provisions of this schedule 1:

- (a) for a Member with at least one year but less than six years on the List of an AFL Club after 1st November 2011:
  - (i) the Member shall receive any Retirement Benefit in July in the year immediately following their Retirement, as a lump sum payment within twelve months of the Member's Retirement.
- (b) for a Member with at least six years but less than eight years on the List of an AFL Club:
  - (i) the Member shall receive 30% of the amount accounted for a Member in July in the year immediately following their Retirement, as a lump sum payment within twelve months of the Member's Retirement, with the residual amount in their account remaining after the deduction of the lump sum to be invested in accordance with ... the Regulations; and
  - (ii) the Member shall receive the balance in the Member's account in periodic instalments over a five-year period commencing in the year after receipt of the lump sum payment.
- (c) For a Member with more than eight years on the List of an AFL Club:
  - (i) the Member shall receive 30% of the amount accounted for in a Member's Account in July in the year immediately following their Retirement, as a lump sum payment within twelve months of their Retirement, with the residual amount in that Account, remaining after the deduction of the lump sum to be invested in accordance with ... the Regulations: and
  - (ii) the Member shall receive the balance in the Member's account in periodic instalments over a ten-year period commencing in the year of receipt of the lump sum payment.

37. Payments made to AFLPA members upon retirement from the AFLPA PRA will only be taxable at the time the player receives the payment from the AFLPA PRA.

38. Payments made under item 2.7(a), 2.7(b)(i) and 2.7(c)(i) of schedule 1 to the Regulations are referred to as initial payments.

39. Payments made under item 2.7(b)(ii) and 2.7(c)(ii) of schedule 1 to the Regulations are referred to as periodic payments.

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**Commissioner of Taxation**

15 January 2025

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Status: **not legally binding**

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## Appendix – Explanation

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**❶** *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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### **Employment termination payments**

40. Payments made in consequence of the termination of your employment are known as employment termination payments.

41. Subsection 995-1(1) states that the phrase 'employment termination payment' has the meaning given to it by section 82-130.

42. Subsection 82-130(1) states that a payment is an employment termination payment if:

- (a) it is received by you:
  - (i) in consequence of the termination of your employment; or
  - (ii) after another person's death, in consequence of the termination of the other person's employment; and
- (b) it is received no later than 12 months after that termination (but see subsection (4)); and
- (c) it is *not* a payment mentioned in section 82-135.

43. All the conditions within subsection 82-130(1) need to be satisfied in order for a payment to be an employment termination payment.

### **Payments received 'in consequence of' the termination of employment**

44. To be an employment termination payment under subsection 82-130(1), the payment must be received by you:

- in consequence of the termination of your employment, or



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- after another person's death, in consequence of the termination of the other person's employment.

45. The phrase 'in consequence of' is not defined within the ITAA 1997. However, the words have been interpreted by the courts in several cases. We have issued Taxation Ruling TR 2003/13 *Income tax: employment termination payments (ETP): payments made in consequence of the termination of any employment: meaning of the phrase 'in consequence of'* which explains our view on the meaning of the phrase 'in consequence of' as used in Subdivision 82-C.

46. The Full High Court of Australia considered the expression 'in consequence of the termination of any employment' in *Reseck v Commissioner of Taxation (Cth)* [1975] HCA 38 (*Reseck*). The relevant issue in that case was whether amounts paid to a taxpayer by his employer at the end of 2 periods of employment, to which the taxpayer was entitled under an agreement between the employer and the taxpayer's union, were an allowance paid in a lump sum 'in consequence of retirement from, or the termination of, any office or employment ...'. Justice Gibbs concluded that the amounts were made in consequence of the termination of the taxpayer's employment. His Honour said that:

Within the ordinary meaning of the words a sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination ... It is not in my opinion necessary that the termination of the services should be the dominant cause of the payment ... In the present case the allowance was paid in consequence of a number of circumstances, including the fact that the taxpayer's service had been satisfactory and that the industrial agreements provided for the payment, but it was none the less paid in consequence of the termination of the taxpayer's employment.

47. Justice Jacobs also concluded that the amounts constituted an allowance that was paid in consequence of the termination of the taxpayer's employment. His Honour said:

It was submitted that the words "in consequence of" import a concept that the termination of the employment was the dominant cause of the payment. This cannot be so. A consequence in this context is not the same as a result. It does not import causation but rather a "following on".

48. The different interpretations of 'in consequence of' adopted by Justices Gibbs and Jacobs were considered by the Full Federal Court in *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65 (*McIntosh*). The matter before the court concerned a taxpayer who one week after retirement, commuted part of the pension to which he became entitled upon his retirement, into a lump sum. The commuted payment was made out of a provident fund established by a bank for the payment of benefits to bank officers on their retirement. The issue being considered by the court was whether the commuted lump sum payment came within former paragraph 26(d) of the *Income Tax Assessment Act 1936*.

49. Justice Brennan considered the judgments of Justices Gibbs and Jacobs in *Reseck* and concluded that their Honours were both saying that a causal nexus between the termination and payment was required, though it was not necessary for the termination to be the dominant cause of the payment. Justice Brennan said that:

Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J. ... His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

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50. In the same case, Justice Lockhart stated:

In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or an antecedent of the payment. The phrase used in [section 26(d)] is not “caused by” but “in consequence of”. It has a wider connotation than causation and assumes a connection between the circumstance of retirement and the act of payment such that the payment can be said to be a “following on” of the retirement.

51. TR 2003/13 considers the divergent views as to the correct interpretation of the phrase ‘in consequence of’ as interpreted by the courts, and provides our view as to its interpretation. This is explained in paragraphs 5 to 7 of TR 2003/13:

5. ... the Commissioner considers that a payment is received by a taxpayer in consequence of the termination of the taxpayer’s employment if the payment ‘follows as an effect or result of’ the termination. In other words, but for the termination of employment, the payment would not have been received by the taxpayer.

6. The phrase requires a causal connection between the termination and the payment, although the termination need not be the dominant cause of the payment. The question of whether a payment is received in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

7. The greater the length of time between the termination of employment and the payment, the more likely that the causal connection between the termination and the payment will be too remote for a conclusion that a payment was received in consequence of the termination of employment. However, length of time will not be determinative when there is a presently existing right to payment of the amount at the time of termination.

#### ***Retirement benefit payments made from the Player Retirement Account***

52. Under the Scheme, for the purposes of retirement benefits, a member is required to have retired as discussed in paragraphs 31 to 32 of this Ruling. Retirement benefits are paid in accordance with item 2.7(a), (b), or (c) of schedule 1 to the Regulations. At the time the retirement benefit is paid, the member would have retired which would mean a termination of their employment. A payment from the PRA to a Member upon their retirement follows as an effect of the termination of their employment and therefore is received ‘in consequence of’ the termination of their employment for the purposes of subparagraph 82-130(1)(a)(i).

53. Subparagraph 82-130(1)(a)(ii) states that a payment will also be an employment termination payment where it is received by you after another person’s death, in consequence of the termination of that other person’s employment.

54. Under the scheme, a payment will satisfy the requirements of subparagraph 82-130(1)(a)(ii) where it has been made from the PRA after the death of a Member, in consequence of the termination of their employment. Where a Member was not engaged in employment at the time of their death, any payment received from the PRA will not be considered to be ‘in consequence of’ the termination of their employment and therefore will not be an employment termination payment.

#### ***Payments received no later than 12 months after the termination***

55. To be an employment termination payment under subsection 82-130(1), paragraph 82-130(1)(b) provides that the payment must be received by you no later than 12 months after the termination of your employment. This is unless an exemption applies under subsection 82-130(4).

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56. Under subsection 82-130(4), an exemption to the 12-month rule will apply where:

- you are covered by a determination made by the Commissioner under subsection 82-130(5) or subsection 82-130(7), or
- the payment is a genuine redundancy payment or an early retirement scheme payment.

57. Subsection 82-130(5) states that the Commissioner may make a determination that the 12-month rule does not apply to you.

58. Under the scheme, where a member has received a payment from the PRA later than 12 months after the termination of their employment, the Member would need to make an application based on their individual circumstances in order for this subsection to apply to them.

59. Subsection 82-130(7) states that the Commissioner may, by legislative instrument, make a determination that the 12-month rule does not apply.

#### ***Initial payment***

60. For the purposes of the initial payment as described in paragraph 38 of this Ruling, as this payment will be made within 12 months of the Member's retirement it will meet the requirements of paragraph 82-130(1)(b).

#### ***Periodic payments***

61. For the purposes of periodic payments, as described in paragraph 39 of this Ruling, where an exemption from the 12-month rule does not apply under subsection 82-130(4) the periodic payments will not be an employment termination payment.

62. An exemption will not apply under subsection 82-130(4) as a determination has not been made by the Commissioner under subsection 82-130(5). While determinations have been made under subsection 82-130(7), it is not relevant in this instance. Further, the payment is not a genuine redundancy payment or an early retirement scheme payment.

63. As such, these payments will be assessable income of the Member in the income year that they are received under section 83-295.

#### ***Payments that are not employment termination payments***

64. To be an employment termination payment under subsection 82-130(1), the payment must not be a payment mentioned within section 82-135. These include (among others):

- a superannuation benefit
- unused annual leave payment
- the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170.

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#### ***Initial and periodic payments***

65. Under the scheme, the payments made to Members who have retired and which are paid from the PRA are calculated based on Members' years of service. The payment would not be a payment listed in section 82-135.

#### ***Fringe benefits tax consequences***

66. A number of specific benefits are not included in the definition of a fringe benefit and are therefore not subject to fringe benefits tax under the FBTA.

67. The definition of a fringe benefit is included under subsection 136(1) of the FBTA.

68. A fringe benefit does not include:

- (lc) an employment termination payment (within the meaning of the ITAA 1997); or
- (ld) a payment that would be an employment termination payment (within the meaning of the ITAA 1997) apart from paragraph 82-130(1)(b) of that Act.

#### ***Initial payment***

69. Under the scheme outlined as described in paragraphs 10 to 39 of this Ruling, initial payments will be excluded as a fringe benefit under paragraph (lc) of the definition of 'fringe benefit' in subsection 136(1) of the FBTA as they are employment termination payments.

#### ***Periodic payments***

70. Periodic payments as described in paragraph 39 of this Ruling will be excluded as a fringe benefit under paragraph (ld) of the definition of 'fringe benefit' in subsection 136(1) of the FBTA as they would be an employment termination payment apart from paragraph 82-130(1)(b).

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## References

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*Related Rulings/Determinations:*

TR 2003/13

- ITAA 1997 82-135
- ITAA 1997 995-1(1)
- ITAA 1997 Subdiv 82-C
- FBTA 1986 136(1)

*Legislative references:*

- ITAA 1936 former 26(d)
- ITAA 1997 82-130
- ITAA 1997 82-130(1)
- ITAA 1997 82-130(1)(a)(i)
- ITAA 1997 82-130(1)(a)(ii)
- ITAA 1997 82-130(1)(b)
- ITAA 1997 82-130(4)
- ITAA 1997 82-130(5)
- ITAA 1997 82-130(7)

*Cases relied on:*

- Reseck v Commissioner of Taxation (Cth) [1975] HCA 38; 133 CLR 45; 5 ATR 538; 75 ATC 4213; 49 ALJR 370; 6 ALR 642
- McIntosh, Charles v The Commissioner of Taxation [1979] FCA 65; 45 FLR 279; 79 ATC 4325; 10 ATR 13; 25 ALR 557

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