

Treasury Laws Amendment (Military Superannuation Benefits) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 19 June 2023

David Hurley

Governor‑General

By His Excellency’s Command

Stephen Jones

Assistant Treasurer  
Minister for Financial Services

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1 Name

This instrument is the *Treasury Laws Amendment (Military Superannuation Benefits) Regulations 2023*.

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 later of:  (a) the start of the day after this instrument is registered; and  (b) immediately after the commencement of Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*.  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 24 June 2023 |

Note: This table relates only to the provisions of this instrument as originally made.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 *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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Components of a superannuation benefit

Income Tax Assessment (1997 Act) Regulations 2021

1 At the end of Subdivision 307‑C

Add:

307‑125.03 Components of certain military superannuation benefits

(1) For the purposes of paragraph 307‑125(4)(a) of the Act, subsection (3) specifies an alternative method for determining the components of a superannuation benefit covered by subsection (2).

(2) For the purposes of subsection (1), this subsection covers a superannuation benefit if:

(a) the superannuation benefit is a superannuation lump sum that is a payment of invalidity pay, an invalidity pension or a pension mentioned in subparagraph 301‑275(1)(b)(i), (ii) or (iii) of the Act; and

(b) the invalidity pay, invalidity pension or pension commenced at a time (the ***commencement time***) that is on or after 20 September 2007.

(3) Determine the components, according to the following method:

(a) first, assume that:

(i) the superannuation benefit is a superannuation income stream benefit; and

(ii) the relevant superannuation income stream commenced at the commencement time;

(b) next, determine the components, making the assumptions mentioned in paragraph (a), in accordance with subsections 307‑125(1), (2) and (3) of the Act.

Note: The components may be modified under sections 307‑145 and 307‑150 of the Act (see subsection 307‑120(3) of the Act).

Part 2—Capped defined benefit income streams and the transfer balance cap

Income Tax Assessment (1997 Act) Regulations 2021

2 Subsection 294‑130.01(1)

Omit “or (6)”, substitute “, (6) or (7)”.

3 At the end of section 294‑130.01

Add:

(7) This subsection applies to a superannuation income stream if it is a superannuation income stream because of paragraph 307‑70.02(1)(ba).

Part 3—Cashing requirements

Superannuation Industry (Supervision) Regulations 1994

4 After paragraph 6.21(2)(a)

Insert:

(aa) a series of payments, each of which is a payment of a superannuation lump sum mentioned in paragraph 301‑275(1)(b) of the 1997 Tax Act;

Part 4—Application

Income Tax Assessment (1997 Act) Regulations 2021

5 In the appropriate position in Chapter 7

Insert:

Part 1000‑4—Transitional matters relating to the Treasury Laws Amendment (Military Superannuation Benefits) Regulations 2023

1000‑4.01 Definitions

In this Part:

***2021 commencement time*** means the commencement time (within the meaning of Part 1000‑1).

***amending instrument*** means the *Treasury Laws Amendment (Military Superannuation Benefits) Regulations 2023*.

***old regulations*** has the same meaning as in Part 1000‑1.

1000‑4.02 Application of amendments

(1) The amendments made by Part 1 of Schedule 1 to the amending instrument apply in relation to income years starting on or after 1 July 2023.

(2) The amendments made by Part 2 of Schedule 1 to the amending instrument apply in relation to superannuation income streams that commenced on or after the 2021 commencement time.

1000‑4.03 Modified continuing application of old regulations

(1) This section applies for the purposes of the continuing application of the old regulations, in relation to superannuation income streams that commenced before the 2021 commencement time.

(2) This section applies despite subsection 1000‑1.06(1).

(3) For the purposes mentioned in subsection (1), treat a superannuation income stream as being prescribed by the old regulations for the purposes of subsection 294‑130(2) of the Act (as a capped defined benefit income stream) if the superannuation income stream:

(a) would *not* be so prescribed under that continuing application (apart from this subsection); but

(b) would be so prescribed under subsection 294‑130.01(7) (as inserted by Part 2 of Schedule 1 to the amending instrument), on the assumption that the superannuation income stream commenced on or after the 2021 commencement time.

Superannuation Industry (Supervision) Regulations 1994

6 In the appropriate position in Part 14

Insert:

Division 14.33—Transitional arrangements arising out of the Treasury Laws Amendment (Military Superannuation Benefits) Regulations 2023

14.35 Arrangements

The amendments made by Part 3 of Schedule 1 to the *Treasury Laws Amendment (Military Superannuation Benefits) Regulations 2023* apply in relation to superannuation lump sums paid on or after 1 July 2017.