



# **Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 3)**

**Select Legislative Instrument 2008 No. 171**

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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 7 August 2008

P. M. JEFFERY  
Governor-General

By His Excellency's Command

NICK SHERRY  
Minister for Superannuation and Corporate Law

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**1 Name of Regulations**

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 3)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Superannuation Industry (Supervision) Regulations 1994***

Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Subregulation 1.03 (1), after definition of *excluded member***

*insert*

*FHSA Act* means the *First Home Saver Accounts Act 2008*.

**[2] Part 3A, after Division 3A.3**

*insert*

**Division 3A.4 Conditions on RSE licences**

**3A.07 Conditions on RSE licences of FHSA providers**

- (1) For subsection 29E (7) of the Act, this regulation sets out conditions that apply to RSE licences of RSE licensees that

hold authorisations as FHSA providers under Part 7 of the FHSA Act.

- (2) An RSE licensee must not:
- (a) appoint or engage a person to be; or
  - (b) allow a person to act as;  
an investment manager or custodian of a superannuation entity if the person is a disqualified person under Part 15 of the Act as applied by Division 2 of Part 7 of the FHSA Act.
- (3) An RSE licensee that becomes aware that it has breached the condition specified in subregulation (2) must, as soon as practicable after so becoming aware, remove the person from the position of investment manager or custodian of the trust.

**[3] Subregulation 7.04 (1), table, item 2**

*substitute*

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|---|----------------------------------|--|
| 2 | is not under 65, but is under 70 | contributions that are made in respect of the member that are: <ul style="list-style-type: none"> <li>(a) mandated employer contributions;<br/>or</li> <li>(b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made:             <ul style="list-style-type: none"> <li>(i) employer contributions (except mandated employer contributions); or</li> <li>(ii) member contributions; or</li> </ul> </li> <li>(c) payments from an FHSA of a kind mentioned in subparagraph 31 (1) (b) (i) or (ii) of the FHSA Act</li> </ul> |
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**[4] Subregulation 7.04 (7), after definition of *employer contributions***

*insert*

***FHSA*** has the meaning given by section 8 of the FHSA Act.

**[5] After regulation 13.19**

*insert*

**13.19A Disqualification by Federal Court — matters to take into account**

- (1) For paragraph 126H (6) (a) of the Act, the matters set out in this regulation are specified.
- (2) In relation to subsection 126H (3) of the Act, the matters are:
  - (a) whether the individual is, or has been, a disqualified person under Part 15 of the Act, as applied by Division 2 of Part 7 of the FHSA Act; and
  - (b) whether the individual has contravened the FHSA Act (including provisions of the Act applied by Division 2 of Part 7 of the FHSA Act) on one or more occasions; and
  - (c) the number, nature and seriousness of any contraventions of the FHSA Act (including applied provisions of the Act).
- (3) In relation to subsection 126H (4) of the Act, the matters are:
  - (a) whether the individual is, or has been, a responsible officer of a trustee, investment manager or custodian that is, or has been, a disqualified person under Part 15 of the Act, as applied by Division 2 of Part 7 of the FHSA Act; and
  - (b) whether the individual is, or has been, a responsible officer of a trustee, investment manager or custodian that has contravened the FHSA Act (including provisions of the Act applied by Division 2 of Part 7 of the FHSA Act) on one or more occasions; and
  - (c) the number, nature and seriousness of any contraventions of the FHSA Act (including applied provisions of the Act).

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- (4) In relation to subsection 126H (5) of the Act, the matters are:
- (a) whether the individual has engaged in conduct that relates to FHSA trusts within the meaning of the FHSA Act on one or more occasions; and
  - (b) whether any conduct of that kind makes it reasonable to conclude that the individual is not a fit and proper person to be a person referred to in subsection 126H (2) of the Act.