



# **Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 4)**

## **Select Legislative Instrument 2008 No. 282**

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I, QUENTIN BRYCE, 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 12 December 2008

QUENTIN BRYCE  
Governor-General

By Her 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. 4)*.

**2 Commencement**

These Regulations commence as follows:

- (a) on the commencement of Schedule 1 to the *Temporary Residents' Superannuation Legislation Amendment Act 2008* — regulations 1 to 3 and Schedule 1;
- (b) on 1 April 2009 — regulation 4 and Schedule 2;
- (c) on 1 July 2009 — regulation 5 and Schedule 3.

**3 Amendment of *Superannuation Industry (Supervision) Regulations 1994* — Schedule 1**

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

**4 Amendment of *Superannuation Industry (Supervision) Regulations 1994* — Schedule 2**

Schedule 2 amends the *Superannuation Industry (Supervision) Regulations 1994*.

**5 Amendment of *Superannuation Industry (Supervision) Regulations 1994* — Schedule 3**

Schedule 3 amends the *Superannuation Industry (Supervision) Regulations 1994*.

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**Schedule 1      Amendments commencing on  
commencement of *Temporary  
Residents' Superannuation  
Legislation Amendment Act  
2008***

(regulation 3)

**[1]      Paragraph 1.05 (2) (f)**

*after*

except

*insert*

in any of the following circumstances

**[2]      After subparagraph 1.05 (2) (f) (vi)**

*insert*

- (vii) the annuity was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

**[3]      Paragraph 1.05 (9) (h)**

*after*

except

*insert*

in any of the following circumstances

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**[4] After subparagraph 1.05 (9) (h) (viii)***insert*

- (ix) the annuity was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

**[5] Paragraph 1.05 (10) (d)***after*

except

*insert*

in any of the following circumstances

**[6] Subparagraph 1.05 (10) (d) (i)***substitute*

- (i) the annuity is not funded from the commutation of:
- (A) another annuity that is provided under a contract that meets the standards of subregulation (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;

and the commutation is made within 6 months after the commencement day of the annuity;

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**[7] After subparagraph 1.05 (10) (d) (vii)**

*insert*

- (viii) the annuity was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

**[8] Paragraph 1.06 (2) (e)**

*after*

except

*insert*

in any of the following circumstances

**[9] After subparagraph 1.06 (2) (e) (vi)**

*insert*

- (vii) the pension was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

**[10] Paragraph 1.06 (7) (g)**

*after*

except

*insert*

in any of the following circumstances

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**[11] After subparagraph 1.06 (7) (g) (viii)***insert*

- (ix) the pension was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

**[12] Paragraph 1.06 (8) (d)***after*

except

*insert*

in any of the following circumstances

**[13] Subparagraph 1.06 (8) (d) (i)***substitute*

- (i) the pension is not funded from the commutation of:
- (A) an annuity that is provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10); or
  - (B) another pension that is provided under rules that meet the standards of subregulation (2), (3) or (7) or this subregulation; or
  - (C) another pension that is provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations;
- and the commutation is made within 6 months after the commencement day of the pension;

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**[14] After subparagraph 1.06 (8) (d) (vii)**

*insert*

- (viii) the pension was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

**[15] Subregulation 5.01 (1), after definition of *rolled over***

*insert*

*superannuation provider* means:

- (a) the trustee of a regulated superannuation fund; or
- (b) the trustee of an approved deposit fund; or
- (c) an RSA provider.

**[16] Subregulation 5.01 (1), definition of *superannuation system*, paragraph (c)**

*substitute*

- (c) the Commissioner of Taxation in the Commissioner of Taxation's role as the maker of payments to a superannuation provider under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

**[17] Subregulation 5.01 (1), definition of *superannuation system*, paragraphs (f) and (g)**

*omit*

**[18] Subregulation 6.01 (2), definition of *non-commutable allocated annuity*, subparagraph (c) (ii)**

*omit*

'Nil'.

*insert*

nil; or

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**[19] Subregulation 6.01 (2), definition of *non-commutable allocated annuity*, after subparagraph (c) (ii)**

*insert*

- (iii) the purpose of the commutation is to satisfy an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**[20] Subregulation 6.01 (2), definition of *non-commutable allocated pension*, subparagraph (b) (ii)**

*omit*

‘Nil’.

*insert*

nil; or

**[21] Subregulation 6.01 (2), definition of *non-commutable allocated pension*, after subparagraph (b) (ii)**

*insert*

- (iii) the purpose of the commutation is to satisfy an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**[22] Subregulation 6.01 (2), after definition of *permanent incapacity***

*insert*

***permanent resident*** means a holder of a permanent visa under the *Migration Act 1958* that has not ceased to be in effect.



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**[23] Subregulation 6.01 (2), after definition of *temporary incapacity***

*insert*

***temporary resident*** means a holder of a temporary visa under the *Migration Act 1958*.

**[24] Subregulation 6.20A (1)**

*substitute*

- (1) This regulation applies to a member's benefits in a regulated superannuation fund that is not an unfunded public sector superannuation scheme if:
- (a) the member:
    - (i) was a temporary resident; and
    - (ii) is not an Australian citizen, New Zealand citizen or permanent resident; and
    - (iii) has departed from Australia; and
  - (b) the member's visa has ceased to be in effect.
- (1A) The member's benefits must be cashed if:
- (a) the trustee of the fund receives a request from the member that the benefits be cashed; and
  - (b) subregulation (2) or (3) is complied with.

**[25] Paragraph 6.20A (2) (a)**

*substitute*

- (a) a copy, or other evidence, of a visa showing that the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

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**[26] Subregulation 6.20A (3)***substitute*

- (3) The trustee of the fund must be satisfied, based on a written statement from the Department of Immigration and Citizenship, that:
- (a) the member was a temporary resident but the member's temporary visa has ceased to be in effect; and
  - (b) the member has departed from Australia.

**[27] Subregulation 6.20A (5), note***substitute*

*Note* A payment made under this regulation is a ***departing Australia superannuation payment*** within the meaning of section 301-170 of the 1997 Tax Act.

**[28] Subregulation 6.20B (1)***substitute*

- (1) This regulation applies to a member's benefits in a regulated superannuation fund that is an unfunded public sector superannuation scheme if:
- (a) the member:
    - (i) was a temporary resident; and
    - (ii) is not an Australian citizen, New Zealand citizen or permanent resident; and
    - (iii) has departed from Australia; and
  - (b) the member's visa has ceased to be in effect.
- (1A) The member's benefits may be cashed if:
- (a) the trustee of the fund receives a request from the member that the benefits be cashed; and
  - (b) subregulation (2) or (3) is complied with.

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**[29] Paragraph 6.20B (2) (a)**

*substitute*

- (a) a copy, or other evidence, of a visa showing that the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

**[30] Subregulation 6.20B (3)**

*substitute*

- (3) The trustee of the fund must be satisfied, based on a written statement from the Department of Immigration and Citizenship, that:
- (a) the member was a temporary resident but the member's temporary visa has ceased to be in effect; and
- (b) the member has departed from Australia.

**[31] After regulation 6.20B**

*insert*

**6.20C Cashing of benefits in a regulated superannuation fund — payment to Commissioner for Taxation**

If the trustee of a regulated superannuation fund is required to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for a member's superannuation interest in the fund, the amount must be cashed in favour of the Commissioner of Taxation as a single lump sum.

*Note* An amount to be paid under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* must be paid by the time required under that Act.

**[32] Paragraph 6.22 (1) (b)**

*substitute*

- (b) unless the conditions of subregulation (4) or (5) are satisfied.

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**[33] After subregulation 6.22 (4)***insert*

- (5) The conditions of this subregulation are satisfied if the member's benefits are paid to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**[34] Subregulation 6.24A (1)***substitute*

- (1) This regulation applies to a member's benefits in an approved deposit fund if:
- (a) the member:
    - (i) was a temporary resident; and
    - (ii) is not an Australian citizen, New Zealand citizen or permanent resident; and
    - (iii) has departed from Australia; and
  - (b) the member's visa has ceased to be in effect.
- (1A) The member's benefits must be cashed if:
- (a) the trustee of the fund receives a request from the member that the benefits be cashed; and
  - (b) subregulation (2) or (3) is complied with.

**[35] Paragraph 6.24A (2) (a)***substitute*

- (a) a copy, or other evidence, of a visa showing that the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

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**[36] Subregulation 6.24A (3)**

*substitute*

- (3) The trustee of the fund must be satisfied, based on a written statement from the Department of Immigration and Citizenship, that:
- (a) the member was a temporary resident but the member's temporary visa has ceased to be in effect; and
  - (b) the member has departed from Australia.

**[37] Subregulation 6.24A (5), note**

*substitute*

*Note* A payment made under this regulation is a ***departing Australia superannuation payment*** within the meaning of section 301-170 of the 1997 Tax Act.

**[38] After subregulation 6.24A**

*insert*

**6.24B Cashing of benefits in approved deposit funds —  
payment to Commissioner for Taxation**

If the trustee of an approved deposit fund is required to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for a member's superannuation interest in the fund, the amount must be cashed in favour of the Commissioner of Taxation as a single lump sum.

*Note* An amount to be paid under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* must be paid by the time required under that Act.

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**[39] Subregulation 6.26 (1)***after*

Subject to

*insert*

this regulation and

**[40] Subregulation 6.26 (2)***omit*

In addition to subregulation (1), a

*insert*

A

**[41] After subregulation 6.26 (2)***insert*

- (3) A member's benefits in an approved deposit fund may be cashed if the benefits are paid to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**[42] Paragraph 6.27 (b)***omit*

the member.

*insert*

the member; or

**[43] After paragraph 6.27 (b)***insert*

- (c) to pay an amount under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**[44] Paragraph 13.16 (2) (b)**

*substitute*

(b) the alteration is necessary for compliance with:

- (i) the Act, the *Income Tax Act 1986*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999* or the Tax Act; or
- (ii) regulations made under any of those Acts; or

**[45] Schedule 1, item 103A**

*substitute*

|      |   |  |
|------|---|--|
| 103A | Former temporary resident to whom regulation 6.20A or 6.20B applies, requesting in writing the release of his or her benefits   | Amount that is at least the amount of the temporary resident's withdrawal benefit in the fund, paid: <ul style="list-style-type: none"> <li>(a) as a single lump sum; or</li> <li>(b) if the fund receives any combination of contributions, transfers and rollovers after cashing the benefits — in a way that ensures that the amount is cashed</li> </ul> |
| 103B | The trustee is required to pay an amount to the Commissioner of Taxation under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> for the member's superannuation interest in the fund | Amount that the trustee is required to pay to the Commissioner of Taxation under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> for the member's superannuation interest in the fund, paid as a single lump sum to the Commissioner   |

**[46] Schedule 1, item 204***substitute*

|      |   |  |
|------|---|--|
| 204  | Former temporary resident to whom regulation 6.24A applies, requesting in writing the release of his or her benefits  | Amount that is at least the amount of the temporary resident's withdrawal benefit in the fund, paid: <ul style="list-style-type: none"> <li>(a) as a single lump sum; or</li> <li>(b) if the fund receives any combination of contributions, transfers and rollovers after cashing the benefits — in a way that ensures that the amount is cashed</li> </ul> |
| 204A | The trustee is required to pay an amount to the Commissioner of Taxation under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> for the member's superannuation interest in the fund | Amount that the trustee is required to pay to the Commissioner of Taxation under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> for the member's superannuation interest in the fund, paid as a single lump sum to the Commissioner   |

**[47] Further amendments**

| <i>Provision</i>                       | <i>omit</i>           | <i>insert</i>      |
|--|-----------------------|--------------------|
| Subparagraph 1.05 (2) (f) (i)          | if                    |                    |
| Subparagraph 1.05 (2) (f) (i)          | annuity; or           | annuity;           |
| Subparagraph 1.05 (2) (f) (ii)         | if the<br>commutation | the<br>commutation |
| Subparagraph 1.05 (2) (f) (ii)         | beneficiary —         | beneficiary and    |
| Sub-subparagraph 1.05 (2) (f) (ii) (B) | or                    |                    |



| <i>Provision</i>   | <i>omit</i>           | <i>insert</i>      |
|--|-----------------------|--------------------|
| Subparagraph 1.05 (2) (f) (iii)  | if                    |                    |
| Sub-subparagraph 1.05 (2) (f) (iii) (C) and subparagraphs 1.05 (2) (f) (iv) and (v)  | or                    |                    |
| Subparagraph 1.05 (2) (f) (vi)   | and                   |                    |
| Subparagraph 1.05 (9) (h) (i)  | if                    |                    |
| Subparagraph 1.05 (9) (h) (i)  | annuity; or           | annuity;           |
| Subparagraphs 1.05 (9) (h) (ii) and (iii)  | beneficiary; or       | beneficiary;       |
| Subparagraph 1.05 (9) (h) (iv)   | spouse; or            | spouse;            |
| Subparagraph 1.05 (9) (h) (v)  | if                    |                    |
| Sub-subparagraph 1.05 (9) (h) (v) (C) and subparagraphs 1.05 (9) (h) (vi) and (vii)  | or                    |                    |
| Subparagraph 1.05 (9) (h) (viii)   | and                   |                    |
| Sub-subparagraph 1.05 (10) (d) (ii) (C)  | or                    |                    |
| Subparagraph 1.05 (10) (d) (iii)   | spouse; or            | spouse;            |
| Subparagraph 1.05 (10) (d) (iv)  | if                    |                    |
| Sub-subparagraph 1.05 (10) (d) (iv) (C) and subparagraphs 1.05 (10) (d) (v) and (vi) | or                    |                    |
| Subparagraph 1.05 (10) (d) (vii)   | and                   |                    |
| Subparagraph 1.06 (2) (e) (i)  | if                    |                    |
| Subparagraph 1.06 (2) (e) (i)  | pension; or           | pension;           |
| Subparagraph 1.06 (2) (e) (ii)   | if the<br>commutation | the<br>commutation |
| Subparagraph 1.06 (2) (e) (ii)   | beneficiary —         | beneficiary and    |
| Sub-subparagraph 1.06 (2) (e) (ii) (B)   | or                    |                    |
| Subparagraph 1.06 (2) (e) (iii)  | if                    |                    |
| Sub-subparagraph 1.06 (2) (e) (iii) (C) and subparagraphs 1.06 (2) (e) (iv) and (v)  | or                    |                    |
| Subparagraph 1.06 (2) (e) (vi)   | and                   |                    |
| Subparagraph 1.06 (7) (g) (i)  | if                    |                    |
| Subparagraph 1.06 (7) (g) (i)  | pension; or           | pension;           |

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| <i>Provision</i>   | <i>omit</i>     | <i>insert</i> |
|--|-----------------|---------------|
| Subparagraphs 1.06 (7) (g) (ii) and (iii)  | beneficiary; or | beneficiary;  |
| Subparagraph 1.06 (7) (g) (iv)   | spouse; or      | spouse;       |
| Subparagraph 1.06 (7) (g) (v)  | if              |               |
| Sub-subparagraph 1.06 (7) (g) (v) (C) and<br>subparagraphs 1.06 (7) (g) (vi) and (vii) | or              |               |
| Subparagraph 1.06 (7) (g) (viii)   | and             |               |
| Sub-subparagraph 1.06 (8) (d) (ii) (C)   | individual; or  | individual;   |
| Subparagraph 1.06 (8) (d) (iii)  | spouse; or      | spouse;       |
| Subparagraph 1.06 (8) (d) (iv)   | if              |               |
| Sub-subparagraph 1.06 (8) (d) (iv) (C) and<br>subparagraphs 1.06 (8) (d) (v) and (vi)  | or              |               |
| Subparagraph 1.06 (8) (d) (vii)  | and             |               |

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## Schedule 2      Amendments commencing on 1 April 2009

(regulation 4)

**[1]      Subregulation 6.01 (2), definition of *condition of release***

*omit*

, and

*insert*

and, subject to regulation 6.01B,

**[2]      After regulation 6.01A**

*insert*

**6.01B      Conditions of release for temporary residents**

- (1) This regulation applies to a member who is or was a temporary resident.
- (2) This regulation does not apply to a member who:
  - (a) is an Australian citizen, a New Zealand citizen or a permanent resident; or
  - (b) is, at any time, the holder of a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa described in Schedule 2 to the *Migration Regulations 1994*.
- (3) The only conditions of release that can apply to the member are:
  - (a) a condition of release that was satisfied by the member before 1 April 2009; and
  - (b) the conditions of release in items 102, 102A, 103, 103A, 103B, 109, 202, 202A, 203, 204 and 204A of Schedule 1.

**[3] After subregulation 6.18 (1)***insert*

*Note* For conditions of release for temporary residents, see regulation 6.01B.

**[4] After subregulation 6.19 (1)***insert*

*Note* For conditions of release for temporary residents, see regulation 6.01B.

**[5] After subregulation 6.23 (1)***insert*

*Note* For conditions of release for temporary residents, see regulation 6.01B.

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## Schedule 3      Amendments commencing on 1 July 2009

(regulation 5)

- [1]      **Subregulation 6.01 (2), definition of *eligible temporary resident visa*, including the note**  
*omit*
- [2]      **Schedule 1AB**  
*omit*
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