



# **Corporations Amendment Regulations 2009 (No. 9)**

## **Select Legislative Instrument 2009 No. 328**

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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 *Corporations Act 2001*.

Dated 25 November 2009

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

CHRIS BOWEN  
Minister for Financial Services, Superannuation and Corporate Law

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**1 Name of Regulations**

These Regulations are the *Corporations Amendment Regulations 2009 (No. 9)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of Corporations Regulations 2001**

Schedule 1 amends the *Corporations Regulations 2001*.

**Schedule 1 Amendment**

(regulation 3)

**[1] Chapter 2D, before Part 2D.6**

*insert*

**Part 2D.2** **Restrictions on indemnities, insurance and termination payments**

**Division 2D.2.2 Termination payments**

**2D.2.01 Meaning of *base salary***

(1) For the definition of *base salary* in section 9 of the Act, the matters specified in the following table are base salary.

**Item    Matter**


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- 1 The components of a short-term employee benefit that:
  - (a) are not dependent on the satisfaction of a performance condition; and
  - (b) are specified in paragraphs (a), (c) and (d) of column 3 of item 6 in the table in subregulation 2M.3.03 (1); and
  - (c) are paid during the relevant period
- 2 A superannuation contribution that:
  - (a) is not dependent on the satisfaction of a performance condition; and
  - (b) is paid during the relevant period
- 3 A share-based payment that:
  - (a) is not dependent on the satisfaction of a performance condition; and
  - (b) is specified in column 3 of item 11 in the table in subregulation 2M.3.03 (1); and
  - (c) is paid during the relevant period
- 4 A liability or prospective liability to pay tax in respect of a fringe benefit taxable amount under:
  - (a) the *Fringe Benefits Tax Assessment Act 1986*; or
  - (b) the *Fringe Benefits Tax Act 1986*;

that relates to the provision of a matter specified in item 1, 2 or 3

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## (2) For subregulation (1):

- (a) if a person has held an office in relation to a company:
  - (i) throughout a period of more than 12 months; or
  - (ii) throughout a number of periods of more than 12 months in total;

the **relevant period** for that person is the last 12 months of that period or the last 12 months of the total period; and
- (b) if a person has held an office in relation to a company:
  - (i) throughout a period of 12 months or less; or
  - (ii) throughout a number of periods of 12 months or less in total;

the **relevant period** for that person is that period or the total period.

**2D.2.02 Meaning of *benefit***

- (1) For paragraph 200AB (1) (e) of the Act, each of the following things is specified:
  - (a) any kind of pension, other than a pension paid from a superannuation fund or a superannuation annuity (whether it is paid from an Australian or a foreign fund);
  - (b) an amount paid as a voluntary out-of-court settlement in a matter relating to the termination of employment;
  - (c) a payment:
    - (i) that is made as part of a restrictive covenant, restraint-of-trade clause or non-compete clause (however described); and
    - (ii) the value of which, when added to the value of all other payments (if any) already made or payable in connection with the person's retirement from board or managerial offices in the company and related bodies corporate, exceeds the payment limit set by section 200G of the Act.

*Note* Subsection 200AB (1) of the Act provides that a benefit includes specified things. Paragraph 200AB (1) (e) of the Act provides that a benefit includes a thing specified in regulations. Things that are not specified in subsection 200AB (1) of the Act or subregulation (1) may also be benefits for the purposes of the Act.

- (2) For subsection 200AB (2) of the Act, each of the following things is specified:
  - (a) a deferred bonus, including a benefit attributable to:
    - (i) the release of the deferred bonus from a restriction relating to death or incapacity; or
    - (ii) the investment of the deferred bonus; or
    - (iii) another change to the value of the deferred bonus;
  - (b) a payment from a defined benefits superannuation scheme that was in existence when this regulation commenced;
  - (c) a genuine superannuation contribution that is paid by an employer or employee on or after the commencement of this regulation;
  - (d) genuine accrued benefits that are payable under a law within the meaning of section 200H of the Act;

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- (e) a payment made under a requirement imposed by a law of another country;
- (f) a reasonable payment that is made:
  - (i) in accordance with a policy of the company or body that applies to all employees; and
  - (ii) as a result of a genuine redundancy; and
  - (iii) having regard to the length of a person's service in an office or position;
- (g) a payment from a prescribed superannuation fund due to death or incapacity.

*Example for paragraph (d)*

A payment of annual leave, long service leave or sick leave.

*Note* Subsection 200AB (2) of the Act provides that a benefit does not include a thing specified in regulations. Things that are not specified in subregulation (2) may also not be benefits for the purposes of the Act.

- (3) In this regulation:

***deferred bonus*** includes an amount, or property, that:

- (a) is earned by, accrued by or allocated to a person as remuneration in respect of a period of employment before the person's retirement; and
- (b) is not paid, provided or released to the person at the time at which it is earned, accrued or allocated.

***prescribed superannuation fund*** has the meaning given by section 200B of the Act.

#### **2D.2.03 When benefit given in connection with retirement from an office or a position**

- (1) For subsection 200A (1A) of the Act, each of the following circumstances is specified in relation to a benefit:
  - (a) circumstances in which the benefit is the automatic vesting of share-based payments for a person on or as a result of retirement from an office or a position;
  - (b) circumstances in which the benefit is the accelerated vesting of share-based payments for a person on or as a result of retirement from an office or a position; and

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- (c) circumstances in which the benefit is a payment made to a person in lieu of the giving of notice of termination.

*Note* Subsection 200A (1A) of the Act provides that a benefit is given in connection with a person's retirement from an office or a position if the benefit is given in circumstances specified in regulations.

- (2) For paragraph 200F (1) (b) of the Act, a benefit requires shareholder approval:
  - (a) if it:
    - (i) is a deferred bonus under paragraph 2D.2.02 (2) (a); and
    - (ii) is subject to automatic or accelerated vesting under subregulation (1); and
    - (iii) exceeds the payment limit set by section 200G of the Act; and
  - (b) if it is not a benefit attributable to the release of a deferred bonus from a restriction due to death or incapacity.