



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

Select Legislative Instrument 2008 No. 282

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

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*.

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

[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;

[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

[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;

[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

[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.

[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

[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.

[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.

[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

[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.

[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">(a) as a single lump sum; or(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 |
| 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"> (a) as a single lump sum; or (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 |
| 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 commutation | the 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 commutation | the 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; |

| <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 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 subparagraphs 1.06 (8) (d) (v) and (vi) | or | |
| Subparagraph 1.06 (8) (d) (vii) | and | |

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.

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
