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: (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 *Superannuation (Unclaimed Money and Lost Members) Act 1999* for the member's superannuation interest in the fund	Amount that the trustee is required to pay to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* 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: (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 *Superannuation (Unclaimed Money and Lost Members) Act 1999* for the member's superannuation interest in the fund	Amount that the trustee is required to pay to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for the member's superannuation interest in the fund, paid as a single lump sum to the Commissioner

[47] Further amendments

Provision	*omit*	*insert*
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	

Provision	*omit*	*insert*
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;

Provision	*omit*	*insert*
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