



Retirement Savings Accounts Amendment Regulations 2009 (No. 1)

Select Legislative Instrument 2009 No. 14

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 *Retirement Savings Accounts Act 1997*.

Dated 5 February 2009

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 *Retirement Savings Accounts Amendment Regulations 2009 (No. 1)*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3 and Schedule 1;
- (b) on 1 April 2009 — regulation 4 and Schedule 2.

3 Amendment of *Retirement Savings Accounts Regulations 1997* — Schedule 1

Schedule 1 amends the *Retirement Savings Accounts Regulations 1997*.

4 Amendment of *Retirement Savings Accounts Regulations 1997* — Schedule 2

Schedule 2 amends the *Retirement Savings Accounts Regulations 1997*.

Schedule 1 Amendments commencing on day after registration

(regulation 3)

[1] Subparagraph 1.07 (3A) (e) (i)

substitute

- (i) if the pension is not funded from the commutation of:
 - (A) another pension that is provided under terms and conditions that meet the standards of this subregulation; or
 - (B) an annuity that is provided under a contract that meets the standards of subregulation 1.05 (2), (3), (9) or (10) of the SIS Regulations; or
 - (C) a pension that is provided under rules that meet the standards of subregulation 1.06 (2), (3), (7) or (8) of the SIS Regulations;and the commutation is made within 6 months after the commencement day of the pension; or

[2] Subparagraph 1.07 (3A) (e) (vii)

omit

primary beneficiary; and

insert

primary beneficiary; or

[3] After subparagraph 1.07 (3A) (e) (vii)*insert*

- (viii) the market linked pension was commenced in contravention of Part 4 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

[4] Subregulation 3.01 (1), after definition of *rolled over**insert**superannuation provider* means:

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

[5] Subregulation 3.01 (1), definition of *superannuation system*, paragraphs (d) and (e)*substitute*

- (d) 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

[6] Subregulation 4.01 (2), definition of *condition of release**substitute*

condition of release means a condition of release specified in column 2 of Schedule 2, and an RSA holder is taken to have satisfied a condition of release if the event specified in that condition has occurred in relation to the RSA holder.

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- [7] **Subregulation 4.01 (2), definition of *eligible temporary resident visa*, including the note**
omit
- [8] **Subregulation 4.01 (2), definition of *non-commutable allocated pension*, subparagraph (b) (ii)**
omit
‘Nil’.
insert
‘Nil’; or
- [9] **Subregulation 4.01 (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*.
- [10] **Subregulation 4.01 (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.
- [11] **Subregulation 4.01 (2), after definition of *temporary incapacity***
insert
temporary resident means a holder of a temporary visa under the *Migration Act 1958*.

[12] Subregulation 4.23A (1)*substitute*

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

[13] Paragraph 4.23A (2) (a)*substitute*

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

[14] Paragraph 4.23A (2) (b)*omit*

the RSA holder has departed from Australia

insert

the RSA holder has left Australia

[15] Subregulation 4.23A (3)*substitute*

- (3) The RSA provider must be satisfied, based on a written statement from the Department of Immigration and Citizenship, that:
 - (a) the RSA holder was a temporary resident but the RSA holder's temporary visa has ceased to be in effect; and

(b) the RSA holder has left Australia.

[16] Subregulation 4.23A (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.

[17] After regulation 4.23A

insert

4.23B Cashing of benefits in an RSA — payment to Commissioner of Taxation

If an RSA provider is required to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for a person's interest in an RSA, the amount must be cashed in favour of the Commissioner of Taxation as a 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.

[18] Paragraph 4.26 (1) (b)

substitute

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

[19] After subregulation 4.26 (4)

insert

(5) The conditions of this subregulation are satisfied if the RSA holder's benefits are cashed in favour of the Commissioner of Taxation to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

[20] Schedule 2, item 104*substitute*

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|------|--|---|
| 104 | Former temporary resident to whom regulation 4.23A 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 RSA, paid: <ul style="list-style-type: none"> (a) as a single lump sum; or (b) if the RSA provider receives any combination of contributions, transfers and rollovers after cashing the benefits — in a way that ensures that the amount is cashed |
| 104A | The RSA provider 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 person's interest in the RSA | Amount that the RSA provider is required to pay to the Commissioner of Taxation under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> for the person's interest in the RSA, paid as a lump sum to the Commissioner |

[21] Schedule 3*omit*

Schedule 2 Amendments commencing on 1 April 2009

(regulation 4)

[1] Subregulation 4.01 (2), definition of *condition of release*

omit

Schedule 2, and

insert

Schedule 2, and, subject to regulation 4.01B,

[2] After regulation 4.01A

insert

4.01B Conditions of release for temporary residents

- (1) This regulation applies to an RSA holder who is or was a temporary resident.
- (2) This regulation does not apply to an RSA holder 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 be satisfied in respect of an RSA holder to whom this regulation applies are:
 - (a) a condition of release that was satisfied by the RSA holder before 1 April 2009; and
 - (b) the conditions of release in items 102, 102A, 103, 104, 104A, 108 and 112 of Schedule 2.

[3] After subregulation 4.21 (1)

insert

Note For conditions of release for temporary residents, see regulation 4.01B.

[4] After subregulation 4.22 (1)

insert

Note For conditions of release for temporary residents, see regulation 4.01B.