



# Superannuation Guarantee (Administration) Amendment Regulations 2008 (No. 1)<sup>1</sup>

**Select Legislative Instrument 2008 No. 132**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Guarantee (Administration) Act 1992*.

Dated 24 June 2008

P. M. JEFFERY  
Governor-General

By His Excellency's Command

NICK SHERRY  
Minister for Superannuation and Corporate Law

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**1 Name of Regulations**

These Regulations are the *Superannuation Guarantee (Administration) Amendment Regulations 2008 (No. 1)*.

**2 Commencement**

These Regulations commence on 1 July 2008.

*Note* Items 5 to 7 of Schedule 1 to the *Superannuation Laws Amendment (2004 Measures No. 2) Act 2004*, to which the amendments made by these Regulations relate, commence on 1 July 2008.

**3 Amendment of *Superannuation Guarantee (Administration) Regulations 1993***

Schedule 1 amends the *Superannuation Guarantee (Administration) Regulations 1993*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 2, definition of *employer contribution rate*, paragraph (b)**

*substitute*

(b) that is expressed as a percentage of his or her ordinary time earnings.

**[2] Regulation 2, definition of *minimum requisite benefit***

*omit*

Occupational Superannuation Standards Regulations.

*insert*

*Superannuation Industry (Supervision) Regulations 1994.*

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**[3] Subregulation 3 (1)**

*substitute*

- (1) An employer must obtain a benefit certificate from an actuary:
  - (a) if the employer is required to lodge a superannuation guarantee statement — on or before the day on which the superannuation guarantee statement for the quarter to which the certificate relates is lodged; or
  - (b) if the employer is not required to lodge a superannuation guarantee statement — at or before the time ascertained under subsections 10 (3) and (4) of the Act; or
  - (c) on or before such later date as the Commissioner allows.

**[4] Paragraph 5 (b)**

*omit*

and

**[5] Paragraph 5 (c)**

*omit*

**[6] Subregulation 6 (1), definition of *F***

*substitute*

***FOTE*** is:

- (a) if a benefit accruing in respect of membership after 30 June 2008 is expressed in the governing rules of a superannuation scheme as a multiple of the annual ordinary time earnings of the person as at the day on which he or she withdraws from the scheme — 0.0833; or
- (b) if a benefit accruing in respect of membership after 30 June 2008 is expressed in the governing rules of the scheme as a multiple of the average annual ordinary time earnings of the person in the period of 3 years ending on the day on which he or she withdraws from the scheme — 0.09; or

- (c) if a benefit accruing in respect of membership after 30 June 2008 is expressed in those governing rules as a multiple of the average annual ordinary time earnings of the person in a particular number of years of membership of the person ending on the day on which he or she withdraws from the scheme:

$$0.0833 + (0.0022 \times A)$$

where:

*A* is the number of years specified in the governing rules of the scheme ending on the day on which the person withdraws from the scheme.

*FSAL* is:

- (a) if *SAL* is the annual salary of the person, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992, as at the day on which he or she withdraws from the scheme — 0.0833; or
- (b) if *SAL* is the average annual salary of the person in the period of 3 years ending on the day on which he or she withdraws from the scheme, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992 — 0.09; or
- (c) if *SAL* is the average annual salary of the person in a number of years, specified in the governing rules of the scheme, ending on the day on which he or she withdraws from the scheme, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992:

$$0.0833 + (0.0022 \times A)$$

where:

*A* is the number of years specified in the governing rules of the scheme ending on the day on which the person withdraws from the scheme.

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**[7] Subregulation 6 (1), definition of *MCR***

*substitute*

***MCR***, in relation to a member of a superannuation scheme, is the rate at which contributions are paid by the member into a superannuation fund in respect of the scheme for the period from 1 July 2008, being a rate that is expressed, for the purposes of the governing rules of the scheme, as a percentage of his or her annual ordinary time earnings.

***MRB*** means the minimum requisite benefit in respect of the person.

**[8] Subregulation 6 (1), definition of *NM***

*omit*

1992

*insert*

2008

**[9] Subregulation 6 (1), after definition of *NM***

*insert*

***NMI***, in relation to contributions to a superannuation scheme in respect of a person that are made between 1 July 1992 and 30 June 2008, is:

- (a) if the number of months from the day on which the first contribution was made to 30 June 2008 is a whole number — that whole number; and
- (b) if the number of months from the day on which the first contribution was made to 30 June 2008 exceeds a whole number — the number that is equal to the sum of:
  - (i) the whole number; and
  - (ii) the fraction that is calculated by dividing the number of days in the month in which the first contribution was made, from the day the first contribution was made to the end of the last day of the month, by the total number of days in that month.

**PAB1** means that part of the minimum requisite benefit that accrued to the person before 1 July 1992, calculated in accordance with subregulation (6).

**PAB2** means that part of the minimum requisite benefit that accrued to the person between 1 July 1992 and 30 June 2008, calculated in accordance with subregulation (7).

**OTE** is:

- (a) if a benefit accruing in respect of the period from 1 July 2008 is expressed in the governing rules of a superannuation scheme as a multiple of the annual ordinary time earnings of a member of that scheme as at the day on which he or she withdraws from the scheme — his or her annual rate of ordinary time earnings as at that day; or
- (b) if a benefit accruing in respect of the period from 1 July 2008 is expressed in the governing rules of the scheme as a multiple of the average annual ordinary time earnings of a member of the scheme in a period referred to in paragraph (b) or (c) of the definition of FOTE — his or her average annual rate of ordinary time earnings in the relevant period.

**[10] Subregulation 6 (1), definition of SAL**

*substitute*

**SAL** is the annual salary of the member on the day on which he or she withdraws from the scheme, calculated in accordance with the governing rules of the scheme applicable as at 30 June 1992, or if a benefit is expressed in the governing rules of the scheme applicable as at 30 June 1992 as a multiple of the annual salary of the member averaged over a period, his or her average annual rate of salary in the relevant period.

**SALI** is the amount that would have been SAL if the member had withdrawn from the scheme on 30 June 1992.

**[11] Subregulation 6 (2)***substitute*

- (2) The notional employer contribution rate in relation to a defined benefit superannuation scheme in respect of a class of employees is calculated in accordance with this regulation if:
- (a) MCR and TCR are greater than 0, and have not changed since 1 July 1992; and
  - (b) MCR and TCR are the same in respect of each employee in the class; and
  - (c) TR has not changed since 1 July 2008; and
  - (d) the definition of SAL in the governing rules of the scheme did not change between 1 July 1992 and 30 June 2008; and
  - (e) no part of the minimum requisite benefit constitutes an element untaxed in the fund of the taxable component (within the meaning of the *Income Tax Assessment Act 1997*); and
  - (f) the benefit certificate to which the notional employer contribution rate relates is in respect of a single superannuation scheme; and
  - (g) the date of effect of the benefit certificate is on or after 1 July 2008; and
  - (h) the minimum requisite benefit as at 30 June 2008 in respect of each employee in the class was equal to the amount calculated using the formula:

$$\text{TCR} \times \text{FSAL} \times \text{NM1} \times \text{SAL} \times (1 - \text{DF}) + \text{A} \times \frac{\text{SAL}}{\text{SAL1}}$$

with the values of *SAL* and *DF* determined as at 30 June 2008 and the value of *A* calculated in accordance with subregulation (6); and

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- (i) the minimum requisite benefit accruing in respect of the period from 1 July 2008 in respect of each employee in the class is prescribed in the governing rules of the scheme as a multiple of:
- (i) the annual ordinary time earnings of the employee as at the day when he or she withdraws from the fund; or
  - (ii) the average annual ordinary time earnings of the employee in a period ending when he or she withdraws from the scheme.

**[12] Subregulations 6 (4), (5) and (6)**

*substitute*

- (4) TCR is calculated using the formula:

$$\frac{\text{MB}}{\text{FOTE} \times \text{NM} \times \text{OTE} \times (1 - \text{DF})}$$

- (5) MB is calculated using the formula:

$$\text{MRB} - \text{PAB1} - \text{PAB2}$$

- (6) PAB1 is calculated using the formula:

$$\frac{\text{A} \times \text{SAL}}{\text{SAL1}}$$

where:

A is the lesser of:

- (a) the amount of the benefit vested in the member as at 30 June 1992 in accordance with the governing rules of the superannuation scheme; and
- (b) the amount of the benefit that has accrued in respect of the member as at 30 June 1992 in accordance with those governing rules.



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(7) PAB2 is calculated using the formula:

$$\text{TCR} \times \text{FSAL} \times \text{NM1} \times \text{SAL} \times (1 - \text{DF})$$

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.