



Superannuation Industry (Supervision) Amendment Regulations 2003 (No.)¹

Statutory Rules 2003 No. ²

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 Industry (Supervision) Act 1993*.

Dated 2003

Governor-General

By His Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]
Minister for Revenue and Assistant Treasurer

DRAFT ONLY

1 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2003 (No.)*.

2 Commencement

These Regulations commence on 1 July 2004.

Instructor	Unless you instruct us otherwise, OLD will gazette regulations 5 working days after an Executive Council meeting. We will table them soon after, usually on the next sitting day after gazettal. Requests for earlier gazettal or urgent tabling must be received by the OLD Publication Officer at least 4 working days before the Executive Council meeting.
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3 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994*, as amended by the *Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 5)*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.03 (1), after definition of *PST*

insert

receiving spouse has the meaning given by paragraph 6.45 (b).

[2] Subregulation 1.03 (1), after definition of *RSA Regulations*

insert

sending spouse has the meaning given by paragraph 6.45 (a).

[3] Sub-subparagraph 3.01 (h) (ii) (B)

omit

the fund concerned.

insert

the fund concerned; or

[4] After paragraph 3.01 (h)

insert

- (i) a receiving spouse for whom an interest has been created in the fund under Division 6.7, if the sending spouse is a member of the fund.

[5] Subregulation 5.06 (1)

substitute

- (1) Subject to this regulation, the following benefits are taken to be minimum benefits in a regulated superannuation fund:
- (a) benefits rolled over or transferred to the regulated superannuation fund;
 - (b) benefits allotted under Division 6.7 to an interest in the regulated superannuation fund held by, or created for, a receiving spouse.

[6] Regulation 6.15

substitute

6.15 Contributions and benefits taken to be preserved benefits

- (1) Contributions made, or benefits rolled over or transferred, to a regulated superannuation fund or an approved deposit fund are taken to be preserved benefits for the purposes of this Division unless and until the trustee is satisfied that they are not preserved benefits.

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- (2) Benefits allotted under Division 6.7 to an interest in a regulated superannuation fund held by, or created for, a receiving spouse are taken to be preserved benefits for the purposes of this Division unless and until the trustee is satisfied that they are not preserved benefits.

[7] Subparagraph 6.17 (2) (a) (ii)

substitute

- (ii) being rolled over or transferred in accordance with Division 6.4, 6.5 or 6.7 or Part 7A; or
- (iii) being allotted under Division 6.7; and

[8] After Division 6.6

insert

Division 6.7 Spouse contributions-splitting amounts

6.40 Application of Division 6.7

This Division applies to a member who holds only an accumulation interest in a fund.

6.41 Definitions for Division 6.7

In this Division:

applicant means a member who makes an application under subregulation 6.43 (1).

deductible contribution means a contribution that is a deductible contribution for:

- (a) the *Income Tax Assessment Act 1936*; or
- (b) the *Income Tax Assessment Act 1997*.

undeducted contribution means a contribution made by a taxpayer or by another person to a regulated superannuation fund in relation to which no deductions are allowable, or have been allowed, to the taxpayer or to the other person in respect of the contributions under the *Income Tax Assessment Act 1936*.

Note An amount rolled over, transferred or allotted under this Division is a spouse contributions-splitting amount (within the meaning of the *Income Tax Assessment Act 1936*) — see the definition of ***contributions-splitting ETP*** in subsection 27A (1) of that Act and regulation 98A of the *Income Tax Regulations 1936*.

6.42 Operating standards

For subsection 31 (1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds.

6.43 Application to roll over, transfer or allot an amount of contributions

- (1) A member of a regulated superannuation fund may, in a financial year, apply to the trustee of the fund to roll over, transfer or allot an amount of benefits, for the benefit of the member's spouse, that is equal to an amount of the contributions made by, for, or on behalf of the member in the previous financial year.

Note This arrangement applies at the request of the member, and is not an arrangement by which the member's superannuation interest is subject to a payment split under Part VIIIIB of the *Family Law Act 1975*. Part 7A deals with those payment splitting arrangements.

- (2) The application must:
 - (a) be in writing; and
 - (b) state that the applicant wishes to roll over, transfer or allot an amount of benefits that is equal to an amount of either or both of:
 - (i) the applicant's deductible contributions for the previous financial year; and
 - (ii) the applicant's undeducted contributions for that financial year; and

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- (c) specify the amount as an amount or as a percentage.

Note An application will be refused if the application relates to the rollover, transfer or allotting of more than 70% of the applicant's deductible contributions for a financial year: see paragraph 6.44 (1) (c). The application may relate to any amount (including 100%) of the applicant's undeducted contributions.

- (3) The application:
 - (a) must ask the trustee to allot the amount to an interest in the fund held by the applicant's spouse; or
 - (b) must:
 - (i) ask the trustee to create a new interest for the applicant's spouse in the fund, into which the amount is to be allotted; and
 - (ii) be accompanied by an application by the spouse; or
 - (c) must ask the trustee to roll over or transfer the amount to an interest in another regulated superannuation fund, an EPSSS or an RSA:
 - (i) held by the applicant's spouse; and
 - (ii) specified in the application.
- (4) The application must state whether the spouse has satisfied a condition of release mentioned in item 101, 102, 103, 106, 201, 202, 203 or 206 of Schedule 1.
- (5) If the trustee of the fund requires further information in relation to the application, the trustee must, as soon as practicable after receiving the application, ask the applicant for the information.

6.44 Decision on application

- (1) Subject to subregulation (2), a trustee must accept an application made under subregulation 6.43 (1) if all of the following conditions are satisfied:
 - (a) the application complies with regulation 6.43;
 - (b) the application relates to the rollover, transfer or allotting of an amount that is not more than the sum of 70% of the applicant's deductible contributions and 100% of the applicant's undeducted contributions for the financial year before the financial year in which the application is made;

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- (c) the application includes a statement to the effect that the spouse has not satisfied a condition of release mentioned in item 101, 102, 103, 106, 201, 202, 203 or 206 of Schedule 1, and the trustee has no reason to believe that the statement is untrue;
 - (d) if the applicant has specified another fund, or an RSA, in the application to which the amount is to be rolled over or transferred, the fund or RSA will accept the amount;
 - (e) if the applicant has asked the trustee to create a new interest in the fund for the applicant's spouse, the fund will create the interest;
 - (f) the trustee has not already rolled over, transferred or allotted an amount of the applicant's benefits for the benefit of the applicant's spouse in the financial year in which the application is received;
 - (g) the applicant is not a protected member;
 - (h) the applicant would not become a protected member as a consequence of accepting the application;
 - (i) the application is received:
 - (i) on or after 1 July 2005; and
 - (ii) before 1 April in a financial year.
- (2) A trustee may accept an application if the conditions in paragraphs (1) (a) to (f) are satisfied.
- (3) If the trustee refuses an application, the trustee must tell the member of the refusal in writing as soon as practicable after refusing the application.

6.45 Consequences if application accepted

For this Part, if a trustee accepts an application made under subregulation 6.43 (1):

- (a) the applicant is a *sending spouse*; and
- (b) the applicant's spouse is a *receiving spouse*.

6.46 Trustee may allot amount within fund

- (1) If a trustee accepts an application made under subregulation 6.43 (1) that asked the trustee to allot an amount to an interest in the fund held by the applicant's spouse, the trustee must allot the amount to the receiving spouse's interest.
- (2) The trustee must allot the amount as soon as practicable, and in any case within 90 days, after:
 - (a) receiving the application; or
 - (b) if the trustee required further information in relation to the application — receiving the further information.

6.47 Trustee may create a new interest within fund to allot amount

- (1) If a trustee accepts an application made under subregulation 6.43 (1) that asked the trustee to create a new interest for the applicant's spouse in the fund, the trustee must:
 - (a) create a new interest for the receiving spouse; and
 - (b) allot the amount to the receiving spouse's interest.
- (2) The trustee must create the receiving spouse's interest, and allot the amount, as soon as practicable, and in any case within 90 days, after:
 - (a) receiving the application; or
 - (b) if the trustee required further information in relation to the application — receiving the further information.

6.48 Trustee may roll over or transfer amount outside fund

- (1) If a trustee accepts an application made under subregulation 6.43 (1) that asked the trustee to roll over or transfer an amount to an interest in another regulated superannuation fund, an approved deposit fund, an EPSSS or an RSA account held by the applicant's spouse, the trustee must roll over or transfer the amount to the receiving spouse's interest.

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- (2) The trustee must roll over or transfer the amount as soon as practicable, and in any case within 90 days, after:
- (a) receiving the application; or
 - (b) if the trustee required further information in relation to the application — receiving the further information.

Notes

1. These Regulations amend Statutory Rules ^year^ No. , as amended by ^year^ No. .
2. Notified in the *Commonwealth of Australia Gazette* on 2003.