



Retirement Savings Accounts 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 *Retirement Savings Accounts Act 1997*.

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 *Retirement Savings Accounts 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 *Retirement Savings Accounts Regulations 1997*

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

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.03 (1), after definition of *protected RSA holder*

insert

receiving spouse has the meaning given by paragraph 4.42 (b).

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

insert

sending spouse has the meaning given by paragraph 4.42 (a).

[3] Regulation 4.17

substitute

4.17 Contributions and benefits taken to be preserved benefits

- (1) Contributions made, or benefits rolled over or transferred, to an RSA are taken to be preserved benefits for the purposes of this Division unless and until the RSA provider is satisfied that they are not preserved benefits.
- (2) Benefits allotted under Division 4.6 to an interest in an RSA held by, or created for, a receiving spouse are taken to be preserved benefits for the purposes of this Division unless and until the RSA provider is satisfied that they are not preserved benefits.

[4] Subparagraph 4.20 (1) (a) (ii)

substitute

- (ii) being rolled over or transferred under Division 4.4 or 4.6 or Part 4A; or
- (iii) being allotted under Division 4.6; and

[5] After Division 4.4

insert

Division 4.6 Spouse contributions-splitting amounts

4.37 Application of Division 4.6

Query: Is an application provision required?

4.38 Definitions for Division 4.6

In this Division:

applicant means a RSA holder who makes an application under subregulation 4.40 (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 an RSA 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*.

4.39 Operating standards

For subsection 38 (1) of the Act, a requirement set out in this Division is a standard applicable to the operation of RSAs.

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

- (1) An RSA holder may, in a financial year, apply to the RSA provider to roll over, transfer or allot an amount of benefits, for the benefit of the RSA holder's spouse, that is equal to an amount of the contributions made by, for, or on behalf of the RSA holder in the previous financial year.

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

- (2) The application must:
 - (a) be in writing; and

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- (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
 - (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 4.41 (1) (c). The application may relate to any amount (including 100%) of the applicant's undeducted contributions.

- (3) The application:
 - (a) must ask the RSA provider to allot the amount to an RSA held by the applicant's spouse; or
 - (b) must:
 - (i) ask the RSA provider to create a new RSA for the applicant's spouse into which the amount is to be allotted; and
 - (ii) be accompanied by an application by the spouse; or
 - (c) must ask the RSA provider to roll over or transfer the amount to an RSA provided by another RSA provider or to an interest in a regulated superannuation fund, an approved deposit fund or an EPSSS:
 - (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 or 106 of Schedule 2.
- (5) If the RSA provider requires further information in relation to the application, the RSA provider must, as soon as practicable after receiving the application, ask the applicant for the information.

4.41 Decision on application

- (1) Subject to subregulation (2), an RSA provider must accept an application made under subregulation 4.40 (1) if all of the following conditions are satisfied:
 - (a) the application complies with regulation 4.40;
 - (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;
 - (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 or 106 of Schedule 2, and the RSA provider has no reason to believe that the statement is untrue;
 - (d) if the applicant has specified an RSA provided by another RSA provider, or a fund, in the application to which the amount is to be rolled over or transferred, the RSA provider or fund will accept the amount;
 - (e) if the applicant has asked the RSA provider to create a new RSA for the applicant's spouse, the RSA provider will create the interest;
 - (f) the RSA provider 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 RSA holder;
 - (h) the applicant would not become a protected RSA holder 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) An RSA provider may accept an application if the conditions in paragraphs (1) (a) to (f) are satisfied.
- (3) If the RSA provider refuses an application, the RSA provider must tell the RSA holder of the refusal in writing as soon as practicable after refusing the application.

4.42 Consequences if application accepted

For this Part, if a RSA provider accepts an application made under subregulation 4.40 (1):

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

4.43 RSA provider may allot amount within RSA

- (1) If a RSA provider accepts an application made under subregulation 4.40 (1) that asked the RSA provider to allot an amount to an RSA held by the applicant's spouse, the RSA provider must allot the amount to the receiving spouse's RSA.
- (2) The RSA provider must allot the amount as soon as practicable, and in any case within 90 days, after:
 - (a) receiving the application; or
 - (b) if the RSA provider required further information in relation to the application — receiving the further information.

4.44 RSA provider may create a new interest within RSA to allot amount

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

4.45 RSA provider may roll over or transfer amount outside RSA

- (1) If a RSA provider accepts an application made under subregulation 4.40 (1) that asked the RSA provider to roll over or transfer an amount to an RSA provided by another RSA provider or to a regulated superannuation fund, an approved deposit fund or an EPSSS held by the applicant's spouse, the RSA provider must roll over or transfer the amount to the receiving spouse's interest.
- (2) The RSA provider 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 RSA provider 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.