



Retirement Savings Accounts Amendment Regulations 2004 (No. 3)¹

Statutory Rules 2004 No. 197²

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 24 June 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

HELEN COONAN
Minister for Revenue and Assistant Treasurer

1 Name of Regulations

These Regulations are the *Retirement Savings Accounts Amendment Regulations 2004* (No. 3).

2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

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), definition of *transferable benefits*, subparagraph (c) (i)

omit

determined in accordance with

insert

determined in the way in which a court would determine an amount in accordance with

[2] Subregulation 1.03 (1), definition of *transferable benefits*, subparagraph (c) (ii)

omit

determined in accordance with

insert

determined in the way in which a court would determine an amount in accordance with

[3] After subregulation 1.06 (3)

before the note, insert

(4) Subregulations (1), (2) and (3) also apply to a person who is a non-member spouse in relation to an RSA interest that is subject to a payment split as if the person were an RSA holder.

[4] After regulation 4A.01

insert

4A.01A Relevant condition of release

In this Part:

- (a) *relevant condition of release* means a condition of release mentioned in item 101, 102, 103 or 106 of Schedule 2; and
- (b) a non-member spouse satisfies a relevant condition of release if the event specified in the condition has occurred in relation to the non-member spouse; and
- (c) in the application of item 101 or 103 of Schedule 2 to a non-member spouse, a reference to an RSA holder in:
 - (i) the definition of *permanent incapacity* in subregulation 4.01 (2); or
 - (ii) the definition of *retirement* in subregulation 4.01 (4);

is taken to be a reference to the non-member spouse.

[5] Division 4A.2, heading

substitute

Division 4A.2 Options available for interests

[6] Regulation 4A.04

omit

This Division

insert

(1) This Division

[7] Regulation 4A.04

insert

(2) This Division also applies in relation to an RSA interest (the *original interest*) if:

- (a) the original interest is subject to a payment split; and
- (b) the original interest is an accumulation interest in the growth phase; and
- (c) the RSA provider has not received a request under regulation 4A.16, 4A.17 or 4A.18 or taken an action under regulation 4A.21 in relation to the original interest.

(3) This Division does not apply to an RSA interest that is determined by reference to a policy of life insurance mentioned in regulation 3.11.

[8] Subregulation 4A.05 (3)*substitute*

(3) Subject to subregulation (4), the value of the benefits that the non-member spouse has in the new RSA must be:

- (a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse when the new RSA is opened — the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or
- (b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member spouse when the new RSA is opened — the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
- (c) if the payment split is a percentage payment split:
 - (i) for an entitlement in respect of an interest in the growth phase — the amount in relation to the interest at the time when the new RSA is opened, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31 (2A) of the *Family Law (Superannuation) Regulations 2001*, multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

- (ii) for an entitlement in respect of any other interest — the amount in relation to the interest at the time when the new RSA is opened, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split.

[9] Subregulation 4A.05 (4)*omit*

immediately before the payment split.

insert

immediately before the non-member spouse interest is opened.

[10] Subregulation 4A.05 (6)*substitute*

- (6) In opening the new RSA for the non-member spouse:
 - (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
 - (b) the proportion taken from each category of benefits must be the same as the proportion that the category bears to the member spouse's interest immediately before the payment split.

(6A) The benefits in the non-member spouse interest are:

- (a) if the original interest is in the growth phase — unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that they had in the member spouse's interest; and
- (b) if the original interest is an allocated pension — unrestricted non-preserved benefits.

[11] Regulation 4A.08

substitute

4A.08 Request for lump sum payment

- (1) This regulation applies if:
 - (a) the non-member spouse has satisfied a relevant condition of release at the operative time for the payment split; or
 - (b) an allocated pension is being paid in respect of the original interest; or
 - (c) the non-member spouse's interest derives from an original interest that comprises only unrestricted non-preserved benefits.
- (2) The non-member spouse may request the RSA provider to pay to the non-member spouse, as a lump sum, the withdrawal benefit from the non-member spouse interest.

[12] Subregulation 4A.11 (2)

omit

Before rolling over

insert

Subject to subregulation (3A), before rolling over

[13] After subregulation 4A.11 (3)*insert*

(3A) If an RSA provider:

- (a) has made reasonable attempts to obtain sufficient information about a non-member spouse to be able to give a payment split notice; and
- (b) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is permitted to act under paragraphs (1) (a) and (b) as if those paragraphs did not require the giving of the payment split notice or the notice under subregulation (2).

Example for paragraph (a)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

(3B) If an RSA provider:

- (a) proposes to give a non-member spouse a notice under subregulation (2); and
- (b) has made reasonable attempts to obtain sufficient information about the non-member spouse to be able to give the notice; and
- (c) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is not required to give the notice, and is permitted to act under paragraphs (1) (a) and (b) as if those paragraphs did not require the giving of the notice.

Example for paragraph (b)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

[14] Subregulation 4A.18 (3)*omit*

[15] Subregulation 4A.21 (2)*omit*

Before rolling over

insert

Subject to subregulation (4), before rolling over

[16] After subregulation 4A.21 (3)*insert*

(4) If an RSA provider:

- (a) has made reasonable attempts to obtain sufficient information about a non-member spouse to be able to give a payment split notice; and
- (b) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is permitted to act under paragraphs (1) (a) and (b) as if those paragraphs did not require the giving of the payment split notice or the notice under subregulation (2).

Example for paragraph (a)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

(5) If an RSA provider:

- (a) proposes to give a non-member spouse a notice under subregulation (2); and
- (b) has made reasonable attempts to obtain sufficient information about the non-member spouse to be able to give the notice; and
- (c) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is not required to give the notice, and is permitted to act under paragraphs (1) (a) and (b) as if those paragraphs did not require the giving of the notice.

Example for paragraph (b)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

[17] Subparagraph 4A.22 (2) (c) (i)

omit

 determined in accordance with

insert

 determined in the way in which a court would determine an amount in accordance with

[18] Subparagraph 4A.22 (2) (c) (ii)

omit

 determined in accordance with

insert

 determined in the way in which a court would determine an amount in accordance with

[19] Subregulation 4A.22 (4)

omit

 immediately before the payment split.

insert

 immediately before the new RSA is opened.

[20] Paragraph 4A.23 (1) (b)

omit

 subregulation 4A.21 (1).

insert

 subregulation 4A.21 (1); or

[21] After paragraph 4A.23 (1) (b)

insert

(c) under subregulation 4A.20 (3).

[22] Subregulation 4A.23 (2)*omit*

The value

insert

Subject to paragraph (4) (c), the value

[23] Paragraph 4A.23 (2) (a)*substitute*

- (a) the value of the benefits that are rolled over or transferred;
and

[24] Paragraph 4A.23 (4) (b)*omit*

payment split.

insert

payment split; and

[25] After paragraph 4A.23 (4) (b)*insert*

- (c) the total amount that is rolled over or transferred must not exceed the withdrawal benefit of the member spouse immediately before the roll over or transfer.

[26] Subparagraph 4A.24 (2) (c) (i)*omit*

determined in accordance with

insert

determined in the way in which a court would determine an amount in accordance with

[27] Subparagraph 4A.24 (2) (c) (ii)

omit

 determined in accordance with

insert

 determined in the way in which a court would determine an amount in accordance with

[28] Subregulation 4A.24 (4)

omit

 immediately before the payment split.

insert

 immediately before the lump sum is paid.

[29] Regulation 4A.25

omit

 This Division applies if:

insert

(1) This Division applies if:

[30] Regulation 4A.25

insert

(2) However, if an amount under the Act would be a death benefit ETP under the *Income Tax Assessment Act 1936* if it were paid to the non-member spouse, a requirement in this Division:

- (a) to pay the amount; or
- (b) to roll over or transfer the amount to another regulated superannuation fund, an RSA, an approved deposit fund or an EPSSS, to be held for the benefit of the non-member spouse; or

- (c) to allocate the amount to an interest that the trustee creates for the non-member spouse in the regulated superannuation fund or approved deposit fund;
is taken to be a requirement to pay the amount to the non-member spouse in cash.

[31] Regulation 4A.26

omit

[32] Subregulation 4A.27 (5)

substitute

- (5) Subject to subregulation (6), the amount must not be allocated, rolled over or transferred unless the transferor RSA provider:
 - (a) has received, from the non-member spouse, consent to the allocation, rollover or transfer; or
 - (b) in the case of a rollover or transfer — believes, on reasonable grounds, that:
 - (i) the receiving RSA provider; or
 - (ii) the trustee of the receiving regulated superannuation fund, approved deposit fund or EPSSS;

has received from the non-member spouse consent to the rollover or transfer.

[33] After subregulation 4A.28 (4)

insert

- (5) If the RSA provider is unable to open a new RSA because of subregulation (4), the RSA provider must:
 - (a) if the non-member spouse asks the RSA provider to pay the amount to which the non-member spouse is entitled to the non-member spouse — pay the amount; or

- (b) in any other case — roll over or transfer the amount to:
 - (i) an RSA provided by another RSA provider, a regulated superannuation fund, approved deposit fund, or EPSSS nominated by the non-member spouse; or
 - (ii) an eligible rollover fund.
- (6) If a non-member spouse makes a request under subparagraph (2) (b) (ii), and the RSA provider, regulated superannuation fund, approved deposit fund, or EPSSS does not accept the rollover or transfer, the RSA provider must:
 - (a) if the non-member spouse asks the RSA provider to pay the amount to which the non-member spouse is entitled to the non-member spouse — pay the amount; or
 - (b) in any other case — roll over or transfer the amount to:
 - (i) an RSA provided by another RSA provider, a regulated superannuation fund, approved deposit fund, or EPSSS nominated by the non-member spouse; or
 - (ii) an eligible rollover fund.

[34] Division 4A.5*omit*

Notes

1. These Regulations amend Statutory Rules 1997 No. 116, as amended by 1997 Nos. 150, 151, 242, 294, 308 and 342; 1998 Nos. 82, 176, 178 and 192; 1999 Nos. 13 and 315; 2000 No. 279; 2002 Nos. 20, 47, 90, 149, 200 and 352; 2003 Nos. 41 and 195 (disallowed by the Senate on 18 September 2003); 2004 Nos. 11 and 147.
2. Notified in the *Commonwealth of Australia Gazette* on 1 July 2004.