

Retirement Scheme

Superannuation and Family Law

Family law treats superannuation as property, which can be divided in the event of a marriage or a de-facto relationship breakdown.

What do the super splitting laws say?

Under the Family Law Act 1975 (Cth), super can be divided in the event of a relationship breakdown.

Couples who have separated and are going through a property settlement are able to make a superannuation agreement (a financial agreement that deals with a super interest) about how their super is to be split.

Super can be split either by:

- an order of the Family Court or Federal Circuit Court of Australia (Court Order); or
- a superannuation agreement (Agreement).

As trustee we are required by law to implement the Court Order or the Agreement (provided it is legally compliant and is binding), as follows:

- provide information to an eligible person (for example, the other party to the split or your legal representative) who inquires about the value of a super interest;
- flag a super interest (on the request of the parties or by Court Order) so that no payment can be made until the flag is lifted; and
- split a super interest either by agreement or by Court Order.

Please note, a super benefit of less than \$5,000 cannot be split.

Requesting information

The member, the member's spouse (including de facto spouses, same sex partners as well as a prospective spouse), a representative of the Court or a person who intends to enter into a superannuation agreement with the member (collectively, 'eligible persons') have the right to obtain details of a member's super entitlements.

The Family Law Act requires that an eligible person seeking information about the super interest of a member must provide a declaration in a form prescribed under the Family Law Super Regulations. We can only act on a request for information where a declaration is provided in the prescribed form.

This declaration is included in the Application for Information under the Family Law Act form. This form and other relevant forms are available at eisuper.com.au/forms. The Trustee does not charge a fee for applying for Family Law information, or for the actual splitting of super.

Providing information

Once the required forms have been received, we will provide the eligible person with the information required by the Family Law Super Regulations which may include the value of the member's super entitlements together with other relevant information that may be needed in determining a super split.

Information is provided as at the date specified in the application, or if no date is specified, the date we receive the application.

The Family Law Act prohibits us from giving a member's address details to an applicant and from telling a member that a request for information has been made by an eligible person.

Information will only be provided where the Family Law Super Regulations require us to provide it.

We are not able to provide any advice as to what might be an equitable basis for apportioning those entitlements as it is a matter for the respective parties to reach agreement on or else have the Family Court do so. It must be kept in mind, that all or part of a super entitlement might be subject to compulsory preservation and that there might also be taxation issues to consider.

What happens next?

Non-member spouse entitlement

The non-member spouse entitlement is specified by the Court Order or Agreement as a dollar amount or as a percentage of the value (base amount) of the accrued benefit. We are required to roll over the amount involved into a separate super account in the name of the spouse. The only exception to this is where the total amount is not subject to compulsory preservation. In this case, the spouse can request direct payment of the total amount.

The spouse can direct us to open an EISS Super account in their name or roll over the entitlement to another complying super fund. The default arrangement in the absence of any direction is that a separate EISS Super account will be established in the spouse's name. The amounts paid into a spouse's account will include the same proportions of the various preservation and taxation components as in the member's own account.

Member's reduced benefit entitlement

The member's reduced benefit entitlement is calculated at the operative time using the non-member spouse percentage. At the operative time, the non-member spouse percentage is calculated as the base amount divided by the actuarially determined family law value of the member's benefit entitlement. This non-member spouse percentage is then applied to all components of the benefit entitlement including the Contributor Financed Benefit, Employer Financed Benefit and Basic Benefit.

Current members of the Retirement Scheme

Please note that the Employer Financed Benefit is based on the number of benefit points accrued and actuarial formulae are then applied to calculate the benefit entitlement at exit. To reflect the family law reduction there will be a permanent reduction in the maximum number of benefit points that can be accrued.

The reduction of benefit points reflects the prepayment of the Employer Financed Benefit portion of the benefit entitlement to the non-member spouse carried out in accordance with Superannuation Law.

Following the reduction of the member's account for the family law payment split at the operative time, the member's benefit entitlement will then accrue normally subject to the permanent reduction of the maximum benefit point entitlement.

Deferred members of the Retirement Scheme

The deferred benefit payable either on retirement/death or by taking a cash withdrawal prior to reaching retirement age is reduced by the non-members spouse percentage at the operative time. Following the reduction, both entitlements will continue to be adjusted with investment earnings until the member's exit from the Scheme.

The member will be notified of the effect of the family law payment split in their next periodic statement.

Fees

The Trustee does not charge any fees for the provision of Family Law information or for the actual 'splitting of the benefit'.

For further information on super splitting, please refer to the Family Court familycourt.gov.au and the Attorney-General's Department ag.gov.au.


Seek professional advice

Our financial planners provide advice over the phone, at our offices or at a location near you.



To book an appointment, please call 1300 369 901 or visit eisuper.com.au/appointment.

We're here to help

 1300 369 901

 eisuper.com.au

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